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STUDY OF MSPB APPEALS DECISIONS FOR FY 1984

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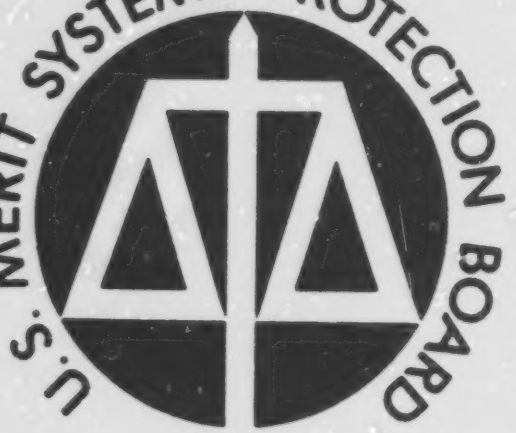

DECEMBER 1985

A REPORT OF THE U.S. MERIT SYSTEMS PROTECTION BOARD
OFFICE OF MERIT SYSTEMS REVIEW AND STUDIES

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MERIT PRINCIPLES GOVERNING THE FEDERAL PERSONNEL SYSTEM

The Civil Service Reform Act (Pub. L. No. 95-454, 92 Stat. 111 (1978)) requires that Federal personnel management be implemented consistent with the following merit principles:

(1) Recruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society, and selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity.

(2) All employees and applicants for employment should receive fair and equitable treatment in all aspects of personnel management without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition, and with proper regard for their privacy and constitutional rights.

(3) Equal pay should be provided for work of equal value, with appropriate consideration of both national and local rates paid by employers in the private sector, and appropriate incentives and recognition should be provided for excellence in performance.

(4) All employees should maintain high standards of integrity, conduct, and concern for the public interest.

(5) The Federal work force should be used efficiently and effectively.

(6) Employees should be retained on the basis of the adequacy of their performance, inadequate performance should be corrected, and employees should be separated who cannot or will not improve their performance to meet required standards.

(7) Employees should be provided effective education and training in cases in which such education and training would result in better organizational and individual performance.

(8) Employees should be --

- (a) protected against arbitrary action, personal favoritism, or coercion for partisan political purposes, and
- (b) prohibited from using their official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for election.

(9) Employees should be protected against reprisal for the lawful disclosure of information which the employees reasonably believe evidences --

- (a) a violation of any law, rule, or regulation, or
- (b) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

It is a prohibited personnel practice to take or fail to take any personnel action when taking or failing to take the action results in the violation of any law, rule or regulation implementing or directly concerning these merit principles.

The Merit Systems Protection Board is directed by law to conduct special studies of the civil service and other Federal merit systems to determine whether these statutory mandates are being met, and to report to the Congress and the President on whether the public interest in a civil service free of prohibited personnel practices is being adequately protected.

These studies, of which this report is one, are conducted by the Office of Merit Systems Review and Studies.

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STUDY OF MSPB APPEALS DECISIONS FOR FY 1984

DECEMBER 1985

A REPORT OF THE U.S. MERIT SYSTEMS PROTECTION BOARD
OFFICE OF MERIT SYSTEMS REVIEW AND STUDIES

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U.S. MERIT SYSTEMS PROTECTION BOARD

Herbert E. Ellingwood, Chairman
Maria L. Johnson, Vice Chair
Dennis M. Devaney, Member

Merit Systems Review and Studies Project Team

Dennis L. Little, Director
John M. Palguta, Supervisory Research Analyst
Raphael Ben-Ami, Policy Analyst
S. E. Tape, Policy Analyst
Cora V. Gibson, Secretary
Vanessa M. Gray, Secretary

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THE CHAIRMAN

U.S. MERIT SYSTEMS PROTECTION BOARD
1120 Vermont Avenue, N.W.
Washington, D.C. 20419

December 1985

Sirs:

In accordance with section 202(a) of the Civil Service Reform Act of 1978 (5 U.S.C. section 1205 (a)(3)), it is my honor to submit the fifth annual report of the MSPB Appeals Decisions for Fiscal Year 1984.

This report covers the appeals decisions by the Merit Systems Protection Board during Fiscal Year 1984 and also presents an analysis of those decisions over the five-year period of FY 1980 through FY 1984.

Respectfully,

Herbert E. Ellingwood

The President of the United States
The President of the Senate
The Speaker of the House of Representatives

Washington, D.C.

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CHAPTER 1

INTRODUCTION AND OVERVIEW

A. PURPOSE OF THE STUDY

One of the principal functions of the Merit Systems Protection Board (MSPB) is to hear and decide the appeals of Federal employees from Government agency personnel actions. This study, prepared by MSPB's Office of Merit Systems Review and Studies (MSRS), analyzes the Regional Office and Board level decisions on those appeals for fiscal year (FY) 1984. An additional chapter presenting and analyzing appeal trends for the five-year period from FY 1980 through FY 1984 is also included in this edition of the study (such five-year analyses will be a permanent part of the annual appeals studies from this year forward). This is the fifth annual study of appeals decisions that MSPB has published.

B. THE APPEALS PROCEDURE[1]

The appeals process begins when an employee[2] files an appeal from an agency personnel action with one of MSPB's 11 Regional Offices.[3] The case is then assigned to a presiding official (one of MSPB's attorney-examiners) in the Regional Office. Not all Federal employees have the right to appeal to MSPB, and not all agency actions may be appealed. Also, there are time limits within which appeals may be filed. Consequently, some appeals are dismissed for lack of subject matter jurisdiction[4] or timeliness. For the purposes of this report, such cases are said to have been rejected without a finding on the merits.[5]

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[1]This description of MSPB's appellate procedure is provided as background and should not be taken as an authoritative statement for legal purposes. A more detailed exposition is found in Title 5, United States Code, and Title 5, United States Code of Federal Regulations, or in the Board's pamphlet titled "Appeal Rights and Procedures."

[2]Although the vast majority of appeals and Petitions for Review are filed by current employees, some appeals are filed by applicants for employment (suitability cases), former employees (retirement cases), and, sometimes, relatives of employees (usually legal retirement cases).

[3]A listing of MSPB's 11 Regional Offices and their jurisdictional alignments during FY 1984 can be found in Appendix 5 of this report.

[4]MSPB's appellate jurisdiction is confined to those cases, specified in Appendix 6, where actions within an agency have been taken.

[5]MSPB's recordkeeping mechanisms do not presently distinguish between rejections for lack of jurisdiction and rejections for timeliness. Consequently, such dismissals are discussed only in the aggregate.

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If an appeal passes the jurisdiction and timeliness tests, the presiding official will decide the appeal on the merits and issue an initial decision. Unless waived by the appellant, a hearing will be held prior to the issuance of the initial decision. The Civil Service Reform Act of 1978 provides for the right to a hearing on every appeal within MSPB's jurisdiction.

The initial decision becomes the final decision of MSPB 35 days after its issuance if a Petition for Review (PFR) has not been filed, and the case is then said to be closed. However, before the 35 day period expires, either the agency or the appellant may request a Board level review if either is dissatisfied with the decision. The filing of a Petition for Review with the Board will stop the decision from becoming effective until the Board takes action upon the case.

The Director of the Office of Personnel Management (OPM), or the Special Counsel may also request a review, or the Board itself may reopen and reconsider a case. This reopening process will also stop the decision from becoming final until the Board takes action on it. If a PFR has been filed or the Board itself reopens and reconsiders a case, the decision of the Board will be the final administrative decision. The Board considers and decides all PFR's filed. A PFR is granted[6] most commonly in order to reverse the Regional Office decision or to address an issue and offer guidance on it. Once the decision is final, it may be appealed to the United States Court of Appeals for the Federal Circuit. However, mixed cases, i.e., those in which issues of discrimination are raised, may be appealed to a U.S. District Court or to the Equal Employment Opportunity Commission.

C. NOTE ON THE DATA

The data used for this annual report were extracted from the Board's Case Tracking System, a computerized data base management system. Where appropriate, we have included the corresponding figures for FY 1983 to illustrate changes which may have occurred from FY 1983 to FY 1984. We have also, as previously mentioned, included a five-year trend analysis in this report. It should be noted that over the five-year period, approximately 835 Board decisions on Petitions for Review dealt with attorney fee, compliance, and enforcement issues. The data for these "special cases" are not currently included in the data retrieved through the Case Tracking System and, therefore, are not included among the decision totals for FY 1984 listed in this report. For the convenience of the reader, a glossary defining the types of cases and other terms as used in this report can be found in Appendix 7.

All references to Air Traffic Controller (ATC) decisions on PFR's in this report represent the number (or percent) of PFR's which were decided, either individually or as part of a consolidation,[7] by the Board in FY 1984. The nature of ATC PFR processing at the Board required that the adjudication of the

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[6] A PFR is considered "granted" if the Board's decision is to reopen a case.

[7] Numerous PFR's were consolidated by the Board for convenience in processing so that individual petitions could be more expeditiously adjudicated without adversely affecting any party.

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ATC petitions be spread over a two-year period (i.e., FY 1983 and FY 1984). It would, therefore, be both misleading and incorrect to draw any comparisons between FY 1983 and FY 1984 ATC statistics. For this reason, the findings and text relative to ATC PFR's in this report present FY 1984 data only.

Most of the data used for the chapter on five-year appeal trends was also produced by the Case Tracking System. However, since the current Case Tracking System was not in place for the entire five-year period of FY 1980 to FY 1984, some of the data used in the chapter on five-year trends was gathered from other sources which provided equivalent information.

While we are confident in the accuracy of the data presented in this report, caution must be exercised in the use and interpretation of that data. There are no established standards or criteria (nor should there be) for the percentage of appeals decisions that should affirm or overturn the agency actions under review. In like manner, there are no set numerical standards by which to judge whether "too many" or "too few" MSPB Regional Office decisions are overturned upon Board review.

Statistical data alone, therefore, is an insufficient basis upon which to make judgments about the equitability of the appeals process. For example, is equity better served if 50 percent of an agency's actions are overturned upon appeal, or if only 5 percent are overturned? Other considerations, beyond the intended scope of this report, must be taken into account in any attempts to answer such questions. A major and obvious consideration within this context is the substance or "merits" of each individual case.

The Board acts upon the facts and arguments presented to it. Some Federal agencies have a significantly higher (or lower) percentage of their actions overturned relative to the average. Reason suggests that some of this difference is related to the general substance of the appeals, for example, the types of action being appealed, the circumstances surrounding those actions, and the agency's and employee's documentation and presentation of the case. Other variables which may influence the outcome of an appeals decision include the experience of the Presiding Official, the existence or lack of legal precedent and, not least of all, the provisions of the civil service law being applied. Although this report provides the most detailed statistical information available anywhere on MSPB's appeals decisions, one should take into consideration <u>all</u> of the above variables in any attempts to further interpret the data.

D. BACKGROUND AND SIGNIFICANT FINDINGS

During the summer of 1981, over 11,000 Air Traffic Controllers staged an illegal work stoppage by refusing to report to their duty stations as instructed by the Federal Aviation Administration (FAA) of the U.S. Department of Transportation. Thereafter, pursuant to Title 5 of the Code of Federal Regulations, the FAA removed the Air Traffic Controllers from their positions for unauthorized absences. This FAA action resulted in unprecedented increases in the workloads of both the Regional Offices and of the Board for both FY 1983 and FY 1984.[8] Although numerous Petitions for Review filed by former Air

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[8]Throughout this report, appeals from Air Traffic Controllers are referred to as "ATC appeals" and all other appeals are referred to as "non-ATC appeals." This same distinction is made in reference to Petitions for Review.

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Traffic Controllers were left pending at the end of FY 1983 for subsequent final decisions by the Board in FY 1984, the Regional Offices were able to virtually eliminate the remainder of the ATC appeals (10,802 ATC appeals decided) during FY 1983.[9] There were, therefore, no ATC appeals decided by the Regional Offices in FY 1984.

This report describes MSPB's adjudicatory activities during FY 1984 and also during the five-year period from FY 1980 through FY 1984. It distinguishes between Regional Office and Board decisions. Based on an analysis of data on appeals to MSPB during these time periods, the significant findings are as follows:

Regional Office Findings

- Regional Offices decided 7,029 non-ATC appeals in FY 1984, a 13 percent decrease from the FY 1983 total of 8,076. The Regional Offices, during FY 1984, made virtually no ATC appeals decisions.

- The Regional Offices held hearings on 3,316 non-ATC appeals decided in FY 1984, **an increase of 17 percent over FY 1983.**

- Non-ATC appeals from agency actions based solely on performance increased from 207 in FY 1983 to 420 in FY 1984.

- Of the 7,029 non-ATC appeals decided by the Regional Offices in FY 1984, 87 percent left the agency action effectively unchanged.

- Regional Offices, in FY 1984, reversed or mitigated agency actions in 23 percent of the non-ATC appeals decided "on the merits." This was slightly lower than the 27 percent which were reversed or mitigated in FY 1983.

- With the elimination of the ATC appeals, the average time to decide a non-ATC appeal at the Regional Offices **decreased by 87 days** (from 199 days in FY 1983 to 112 days in FY 1984).

Board Findings

- The total number of Petitions for Review decided by the Board increased significantly from FY 1983 to FY 1984 -- rising from 3,881 to 5,223. **The number of non-ATC PFR's decided increased by almost 200 percent** (from 916 to 2,737).

- Employees filed 85 percent of the 2,737 non-ATC PFR's decided by the Board.

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[9] A few ATC appeals remained. These were appeals remanded by the Board to the Regional Offices for the development of additional facts pertaining to the merits of the actions taken or to clarify questions regarding the legality of suspension actions taken during the "notice period" for the removal action.

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- The Board decided to grant (reopen) 365 non-ATC and 967 ATC cases in FY 1984.

- In FY 1984, 5 percent of the 2,330 non-ATC PFR's filed by employees resulted in the Regional Office decision being overturned. Of the 370 non-ATC PFR's filed by agencies, 29 percent resulted in the Regional Office decision being overturned.

- Eighty-two percent of the 967 ATC PFR's granted ended in final decisions whereby the Federal Aviation Administration prevailed and removals of the employees remained in force.

- The average time to process a non-ATC PFR for cases decided in FY 1984 **decreased to 267 days from the FY 1983 average of 318 days.** The average time to process an ATC PFR for cases decided in FY 1984 was 264 days.

FIVE YEAR TRENDS

Regional Offices

- **There were 40,634 appeals (including 11,360 ATC appeals) decided by the Regional Offices during fiscal years 1980 through 1984.** Workload for the Regional Offices was at its lowest level in FY 1980, with a total of 3,641 appeals decided, and was at its highest in FY 1983, as a result of the Air Traffic Controller appeals, with 18,878 appeals decided.

- The Regional Offices held hearings on 1,394 non-ATC appeals decided in FY 1980; 2,345 in FY 1981; 1,589 in FY 1982; 2,824 in FY 1983; and 3,316 in FY 1984. On the average, hearings were held for 39 percent of all the appeals decided during the five-year period.

- Throughout the five-year period, once a non-ATC appeal was reached "on the merits," the appealed agency action was affirmed in 73 percent of the 15,434 cases.

- The average time for a Regional Office to decide a non-ATC appeal was 83 days in FY 1980, 113 days in FY 1981, 108 days in FY 1982, 199 days in FY 1983, and 112 days in FY 1984. **In sum, the Regional Offices issued decisions within the Board's 120-day time standard four of the last five fiscal years.** Regional Offices did not meet the standard in FY 1983 due to the impact of the ATC appeals filed that year.

The Board

- Relative to the 893 non-ATC PFR's decided in FY 1980, the number of non-ATC PFR's decided by the Board increased significantly in FY 1981 and 1982 to approximately 1,200. After a moderate decline in FY 1983 (916 non-ATC PFR's decided), **the number of decisions rose dramatically to 2,737 in FY 1984.**

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- Among all non-ATC PFR's **filed by employees**, the percentage of decisions overturned in the Regional Offices increased from 3 percent in FY 1980 (19 of 736) to 12 percent in FY 1981 (114 of 942) and to 17 percent in FY 1982 (171 of 1,019), before decreasing to 10 percent in FY 1983 (80 of 835) and to 5 percent in FY 1984 (106 of 2,330).

- Among all non-ATC PFR's **filed by agencies**, the percentage of decisions overturned in the Regional Offices increased from 5 percent in FY 1980 (8 of 146) to 36 percent in FY 1981 (55 of 154) and to 39 percent in FY 1982 (66 of 168), before decreasing to 33 percent in FY 1983 (26 of 80) and to 29 percent in FY 1984 (109 of 370).

- The average decision time for a non-ATC PFR decreased from 291 days in FY 1980 to 206 days in FY 1981. The average time then increased to 319 days in FY 1982 and 318 days in FY 1983, before decreasing to 267 days in FY 1984.

E. OVERVIEW OF REPORT

The remainder of the report consists of three chapters, followed by appendixes. A brief overview of the chapters follows.

Chapter 2: The Regional Offices

This chapter examines: the numbers and types of appeals decided; the numbers of hearings held; the outcomes of the appeals decided; appeal decision times; agency standings; and appellant demographic characteristics, such as pay plan, veterans status, sex, grade level within pay plan, and age.

Chapter 3: The Board

This chapter looks at: the number of PFR's decided; who requested the reviews; the number of PFR's granted; the proportion of Regional Office decisions remaining unchanged compared to the number that were overturned; the relative "success rates" of employees and agencies; and the length of time it took to decide appeals.

Chapter 4: Five-Year Trends

This chapter presents selected data portraying appeals decisions at both the Regional Offices and at the Board for the period of FY 1980 through FY 1984.

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CHAPTER 2

THE REGIONAL OFFICES

A. INTRODUCTION

The MSPB Regional Office is the first stop in the Board's appeals process. It is here that a presiding official is assigned the appeal, decides the appeal, and issues an initial decision. If an appeal is determined to be outside the Board's jurisdiction or if it is not filed within the prescribed time limits, the Regional Office will dismiss the appeal without an examination of the substance or content of the particular case. If an appeal is within the Board's jurisdiction and is filed in a timely manner, it is then decided "on the merits."

If an appeal is to be decided on the merits of the case, the appellant has a right to request a hearing. Regardless of whether a hearing is held, the Board has established 120 days as the deadline by which a Regional Office should issue a decision on any appeal. The decision of the Regional Office becomes final unless a Petition for Review (PFR) is filed with the Board within 35 days. Only about a fourth of all appeals proceed beyond the Regional Office level.[1]

The Regional Offices had issued decisions on all Air Traffic Controller appeals by the end of FY 1983. Therefore, in FY 1984, they were able to concentrate on successfully reducing the backlog of non-ATC appeals. One of the more significant results of this situation was that the average time required to process an appeal at the Regional Office level decreased from 6.6 months in FY 1983 to 3.8 months in FY 1984.

Major Findings

Based on an analysis of Regional Office appeals activity during FY 1984 and, where possible, the corresponding data for FY 1983, the major findings are as follows:

- The total number of non-ATC appeals decided by the Regional Offices in FY 1984 was 7,029, a 13 percent decrease from the FY 1983 total of 8,076 appeals. However, it should be noted that FY 1983 was a peak workload year for the Regional Offices relative to non-ATC appeals decisions. (See Chapter 4 of this report for a more complete overview of the Regional Office workload from FY 1980 through FY 1984). There were no Air Traffic Controller appeals decided by the Regional Offices during FY 1984.

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[1]This percentage does not include the Air Traffic Controller cases decided by the Regions during FY 1983. Almost half (48%) of the ATC appeals resulted in PFR's.

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- The number of non-ATC appeals from agency actions based solely on performance increased from 207 in FY 1983 to 420 in FY 1984.

- The Regional Offices held hearings on 3,316 non-ATC appeals decided in FY 1984, an increase of 492 (17%) over FY 1983. The percentage of appeals for which hearings were held rose from 35 percent in FY 1983 to 47 percent in FY 1984.

- The Regional Offices decided a slightly greater percentage of non-ATC appeals on the merits in FY 1984 (53%) than in FY 1983 (50%).

- Of the 7,029 non-ATC appeals decided by the Regional Offices in FY 1984, 87 percent left the agency action effectively unchanged, either because the appeal was dismissed or because the agency action was affirmed. The comparable figure for FY 1983 was 86 percent.

- For those non-ATC appeals which were decided on the merits in FY 1984, the Regional Offices reversed or mitigated agency actions in 23 percent of the cases. This was slightly lower than the 27 percent which were reversed or mitigated in FY 1983.

- Of the 781 Regional Office decisions on non-ATC appeals which reversed agency actions in FY 1984, 10 percent were based on a finding that harmful procedural error had occurred. The comparable figure for FY 1983 was 8 percent of a total of 1,007 reversals.

- With the elimination of the ATC appeals, the average time to decide a non-ATC appeal at the Regional Office level decreased from 6.6 months in FY 1983 to 3.8 months in FY 1984.

- The Regional Offices overturned the actions of some agencies more than others. For instance, of those appeals decided on the merits, the Department of Energy had the lowest reversal/mitigation rate (6%) while the Department of Housing and Urban Development had one of the highest rates (24%).

B. FINDINGS

In this section we will address the data under the following subheadings: **Appeals Decided, Numbers of Hearings Held, Appeal Outcomes, Decision Times, Agency Standings, and Appellant Demographic Characteristics,** such as pay plan, length of service, veterans status, sex, grade level within pay plan, and age. Where feasible, we have included the corresponding figures for FY 1983 to illustrate changes which may have occurred from year to year. Chapter 4 to this report tracks some of this same information over a five year span. Aggregated statistics and findings for all of the Regional Offices will be presented in this section; specific information for each Regional Office can be found in Appendix 1.

Appeals Decided

By the end of FY 1983, the Board's Regional Offices had issued decisions on all Air Traffic Controller appeals. All Regional Office decisions during FY 1984, therefore, were in reference to non-ATC appeals. Exhibit 1 shows

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that the total number of non-ATC appeals decided by the Regional Offices in FY 1984 was 7,029, a decrease of 1,047 (13%) from the FY 1983 total of 8,076 non-ATC appeals decided, but an increase of 2,111 (43%) over the FY 1982 total of 4,918 non-ATC appeals decided. Exhibit 1 also shows the numbers and percentages of the various types of non-ATC appeals decided by the Regional Offices. As illustrated, a major portion of this overall reduction in appeals decided from FY 1983 to FY 1984 can be attributed to decreases in appeals decisions related to reduction-in-force and disability retirement appeals.

As also seen in Exhibit 1, the composition of the Regional Offices' non-ATC caseloads shifted slightly from FY 1983 to FY 1984, with relative increases in FY 1984 in the proportion of adverse action appeals (up 7 percentage points), non-disability retirement appeals (up 5 percentage points), and "other" appeals including Part 432 performance based appeals (up 3 percentage points). There were corresponding decreases in FY 1984 in disability retirement appeals (down 6 percentage points), reduction-in-force appeals (down 7 percentage points), and termination of probationers appeals (down 2 percentage points).

Exhibit 1

REGIONAL OFFICE DECISIONS FOR NON-ATC APPEALS IN FY 1983 AND FY 1984 BY TYPE OF APPEAL

	FY 1982		FY 1983		FY 1984	
Type of Appeal	Number	%	Number	%	Number	%
Adverse Action	2,198	45	3,443	43	3,519	50
Disability Retirement	383	8	1,346	17	734	11
Reduction-in-Force	1,176	24	1,379	17	704	10
Termination of Probationers	395	8	526	7	361	5
Denial of Within-Grade (Competence)	145	3	181	2	156	2
Miscellaneous[1]	305	6	444	6	363	5
Nondisability Retirement	126	3	205	2	465	7
Other[2]	190	4	544	7	727	10
TOTAL	4,918	100%	8,068[3]	100%	7,029	100%

1 Appeals not fitting any other appeal category for which jurisdiction must be decided.

2 Appeals dealing with a wide variety of issues which are legitimately under the Board's jurisdiction, but which occur so infrequently that the separate categorization and statistical analysis of each is unwarranted.

3 This figure is short of the base number of 8,076 total non-ATC appeals decided by the Regional Offices in FY 1983. This is due to a coding error which resulted in 8 appeals not being detected by the Case Tracking System during its processing scan.

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Exhibit 2 shows the sub-issues within each type of non-ATC appeal decided in the Regional Offices in FY 1983 and FY 1984. Three points are of special interest in this Exhibit: (1) the sub-issues under reduction-in-force appeals are almost evenly divided between separations and demotions as the dominant actions; (2) adverse action removals and involuntary resignations, reduction-in-force separations and termination of probationers appeals, taken together, show that 48 percent of the Regional Offices' caseloads involved the issue of continued employment of appellants (in contrast to 44 percent in FY 1983); and

Exhibit 2

REGIONAL OFFICE DECISIONS FOR NON-ATC APPEALS IN FY 1983 AND FY 1984, BY SUB-ISSUE WITHIN EACH TYPE OF NON-ATC APPEAL

Type of Appeal	FY 1983[1] Number	FY 1983 Percent	FY 1984 Number	FY 1984 Percent
Adverse Action	3,465	42%	3,519	50%
Removal	2,555	31	2,693	38
Suspension	398	5	214	3
Grade Reduction	178	2	185	2
Involuntary Resignation	91	1	126	2
Pay Reduction	19	0	40	1
Other	224	3	261	4
Nondisability Retirement	207	3%	465	7%
Annuity Pay to Survivor	40	1	174	2
Other	167	2	291	5
Disability Retirement	1,347	16%	734	11%
Reject Employee Application	1,297	16	708	10
Other	50	0	26	1
Reduction-in-Force	1,546	19%	704	10%
Separation	509	6	238	3
Reassignment	138	2	75	1
Downgrade	604	7	248	4
Other	295	4	143	2
Termination of Probationers	525	6%	361	5%
Termination	482	6	347	5
Involuntary Resignation	9	0	2	0
Other	34	0	12	0
Denial of Within-Grade (Competence)	181	2%	156	2%
Negative Reconsideration	151	2	135	2
Other	30	0	21	0
Miscellaneous	444	5%	363	5%
Other	544	7%	727	10%
Part 432-Performance	207	3	420	6
Remainder	337	4	307	4
TOTAL	8,259	100%	7,029	100%

1 These figures are higher than the corresponding numbers for FY 1983 listed elsewhere in this report. This is due to a coding error which resulted in the double counting of some appeals which were entered into the Case Tracking System with more than one closing action.

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(3) the number of appeals from agency actions based solely on performance (under Title 5, Part 432, of the Code of Federal Regulations) increased from 207 in FY 1983 to 420 in FY 1984. The increase in the number of performance related appeals may be attributed primarily to the adoption and implementation of performance plans by the agencies in FY 1983 and FY 1984.[2]

Number of Hearings Held

The Civil Service Reform Act gives every appellant to MSPB the right to a hearing if he or she so desires (assuming their appeal is timely and within the Board's jurisdiction). The Regional Offices held hearings on 3,316 of the non-ATC appeals decided in FY 1984. This is an increase of 492 (17%) over the 2,824 hearings held by the Regional Offices in FY 1983 (see Exhibit 3). Exhibit 3 shows that the percentage of appeals decided by the Regional Offices for which hearings were held increased from 35 percent in FY 1983 to 47 percent in FY 1984. Most of the increase both in the percentage of appeals with hearings and in the absolute number of hearings held was attributable to adverse action and nondisability retirement appeals.

Exhibit 3

REGIONAL OFFICE HEARINGS FOR NON-ATC APPEALS IN FY 1983 AND FY 1984, BY TYPE OF APPEAL

	FY 1983			FY 1984		
Type of Appeal	Number Decided	Number of Hearings	%	Number Decided	Number of Hearings	%
Adverse Action	3,443	1,603	47	3,519	1,943	55
Disability Retirement	1,346	484	36	734	409	56
Reduction-in-Force	1,379	319	23	704	287	41
Termination of Probationers	526	63	12	361	48	13
Denial of Within-Grade (Competence)	181	63	35	156	75	48
Miscellaneous	444	34	8	363	25	7
Nondisability Retirement	205	38	19	465	108	23
Other	544	220	40	727	421	58
TOTAL	8,068[1]	2,824	35%	7,029	3,316	47%

[1] This figure is 8 short of the base number of 8,076 total non-ATC appeals decided by the Regional Offices in FY 1983. This is due to a coding error which resulted in 8 appeals not being detected by the Case Tracking System during its processing scan.

[2] One of the key objectives of the Civil Service Reform Act of 1978 (CSRA) was to simplify the procedures for an agency to remove or reduce in grade or pay an employee whose performance is unsatisfactory. The CSRA required all agencies to have an OPM-approved appraisal system in place by October 1, 1981. Performance plans developed in accordance with the OPM-approved appraisal systems had been fully implemented by the beginning of FY 1983. Consequently, agencies were in a better position to initiate performance-based actions against those employees who had demonstrated unsatisfactory performance.

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Appeal Outcomes

The percentage of non-ATC appeals which were decided on the merits increased slightly from 50 percent in FY 1983 to 53 percent in FY 1984 (see Exhibit 4). The proportional differences between FY 1983 and FY 1984 non-ATC appeal outcomes are displayed in Figure 1. An examination of these outcomes also shows that of the 7,029 non-ATC appeals decided in FY 1984, 87 percent left the agency action effectively unchanged either because the appeal was dismissed or because the agency action was affirmed. The comparable figure for FY 1983 was 86 percent.

Figure 2 sets forth the outcomes of those non-ATC appeals which were decided on the merits. As illustrated, the Regional Offices reversed or mitigated a slightly smaller proportion of agency actions in FY 1984 (23%) than in FY 1983 (27%).

Exhibit 4

REGIONAL OFFICE DECISIONS FOR NON-ATC APPEALS IN FY 1983 AND FY 1984, BY OUTCOME OF APPEAL

Outcome	FY 1983 Number	FY 1983 %	FY 1984 Number	FY 1984 %
Appeal rejected without finding on merits	3,924	49	3,293	47
Appeal remanded to agency	3	0	2	0
Appeal decided on merits: affirmed, mitigated, or reversed	4,088	50	3,703	53
Other decisions[1]	61	1	31	0
TOTAL	8,076	100%	7,029	100%

[1] Other decisions includes appeals improperly coded and/or those appeals not detected by the Case Tracking System during its processing scan.

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FIGURE 1

REGIONAL OFFICE DECISIONS FOR NON-ATC APPEALS, BY OUTCOME

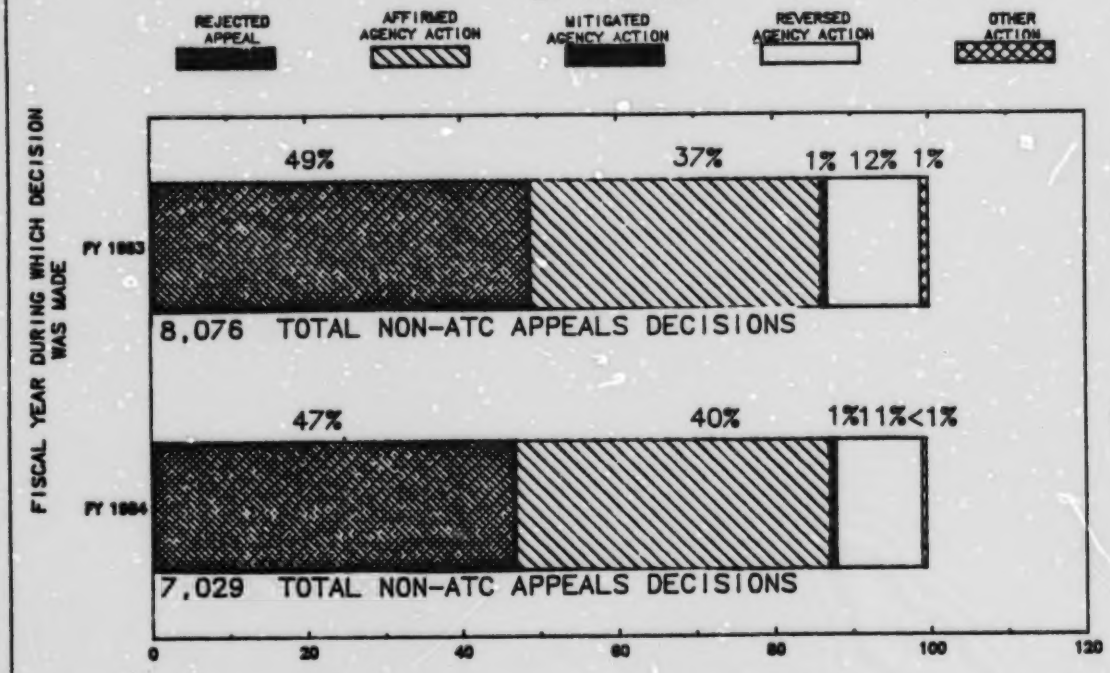

FIGURE 2

REGIONAL OFFICE DECISIONS MADE ON THE MERITS FOR NON-ATC APPEALS, BY OUTCOME

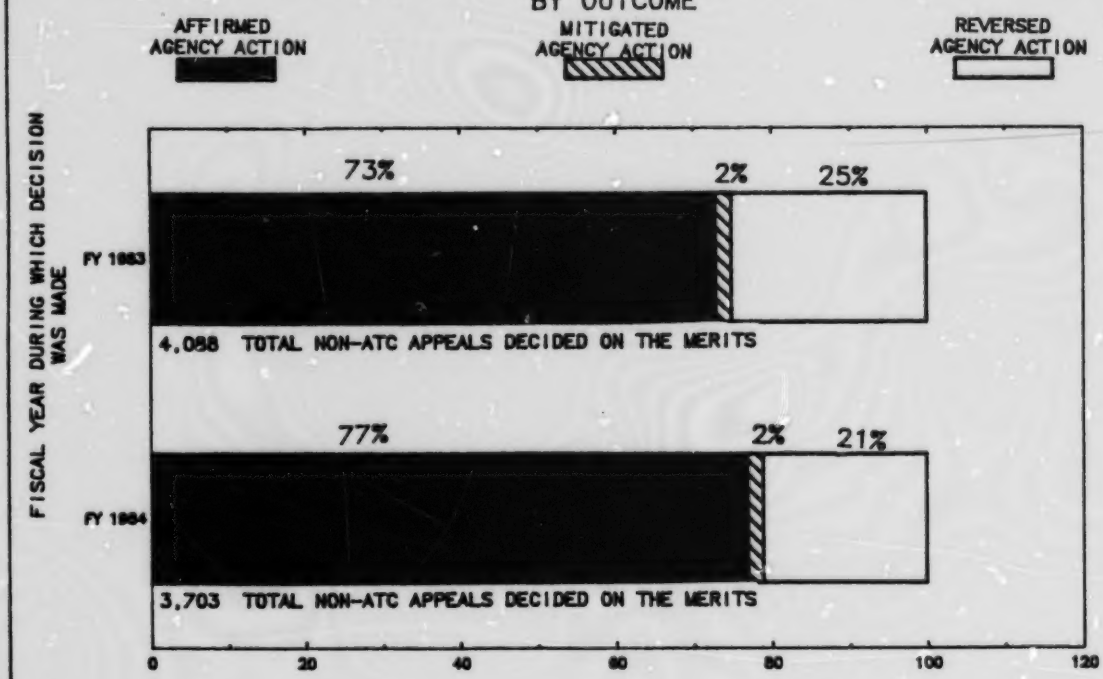

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Exhibit 5 shows the percentage of those non-ATC appeals decided on the merits which reversed or mitigated agency actions, by type of appeal. As seen in Exhibit 5, the percentage of reduction-in-force appeals which reversed or mitigated agency personnel actions dropped sharply in FY 1984 to less than one-third of the comparable FY 1983 level. The reversal and mitigation rates for termination of probationers, denial of within-grade increase, and retirement appeals all showed noticeable increases. The proportion of termination of probationers appeals decisions which were made on the merits of the cases and which reversed or mitigated agency actions increased significantly from 24 percent in FY 1983 to 41 percent in FY 1984. Likewise, the reversal and mitigation rate for denial of within-grade increase appeals rose from 9 percent in FY 1983 to 22 percent in FY 1984, and the rate for disability retirement appeals increased from 47 percent in FY 1983 to 59 percent in FY 1984.

Exhibit 5

THE PERCENTAGE OF REGIONAL OFFICE DECISIONS MADE ON THE MERITS IN FY 1983 AND FY 1984 AND WHICH REVERSED OR MITIGATED AGENCY ACTIONS,[1] BY TYPE OF NON-ATC APPEAL

Type of Appeal	FY 1983	FY 1984
Adverse Action	16% (286)	17% (319)[2]
Disability Retirement	47% (500)	59% (353)
Reduction-in-Force	28% (229)	8% (29)
Termination of Probationers	24% (5)	41% (7)
Denial of Within-Grade (Competence)	9% (7)	22% (16)
Nondisability Retirement	10% (75)	15% (49)
Other[3]	19% (46)	21% (95)
OVERALL	26% (1,088)	23% (868)

1 The percentages in this exhibit represent the proportions of decisions in each appeal category which were made on the merits of the cases and which reversed or mitigated agency actions. For example, the 17% figure shown for Adverse Action decisions in FY 1984 represents those 319 decisions out of the total of 1,869 adverse action decisions made on the merits of the cases which reversed or mitigated agency actions. A complete display of the numbers used to create this exhibit can be seen in Appendixes 1 and 2.

2 The number in parentheses is the number of non-ATC appeals included in this category.

3 Includes both the "miscellaneous" category and performance-based (Part 432) actions.

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As shown in Exhibit 6, there were 781 Regional Office decisions on non-ATC appeals which reversed agency actions in FY 1984. Eighty-two or approximately 10 percent of these were based on a finding that harmful procedural error had occurred. In FY 1983, approximately 8 percent of the reversals were based on a finding that harmful procedural error had occurred. Exhibit 6 also shows the distribution of non-ATC reversals for harmful procedural error by type of appeal. The greatest number of reversals for procedural error in FY 1984 occurred relative to adverse action appeals. Proportionately, however, there was a greater percentage of reversals based on procedural error relative to termination of probationers (5 out of 7 or 71%) and denial of within-grade-increase appeals (4 out of 16 or 25%). These percentages may not be statistically significant, however, given the small number of cases in each category.

Exhibit 6

REGIONAL OFFICE DECISIONS FOR NON-ATC APPEALS IN FY 1984 INVOLVING PROCEDURAL REVERSALS, BY TYPE OF APPEAL

Type of Appeal	FY 1984 Number of Reversals	FY 1984 Number Reversed on Procedures	FY 1984 Percent Reversed on Procedures
Adverse Action	236	36	15%
Disability Retirement	353	16	5%
Reduction-in-Force	29	3	10%
Termination of Probationers	7	5	71%
Denial of Within-Grade (Competence)	16	4	25%
Nondisability Retirement	49	1	2%
Other[1]	91	17	19%
TOTAL	781	82	10%

1 Includes both the "miscellaneous" category and performance-based (Part 432) actions.

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Decision Times

With the elimination of the Air Traffic Controller appeals, the average time to decide a non-ATC appeal at the Regional Offices decreased from 6.64 months in FY 1983 to 3.75 months in FY 1984 (see Exhibit 7). As also shown in Exhibit 7, the Regional Offices decided a higher percentage of appeals within the Board's 120-day deadline in FY 1984 (77%) than in FY 1983 (40%). Exhibit 8 shows that, as might be expected, appeals which were dismissed as untimely or outside the Board's jurisdiction were processed, on average, about 2 months faster than appeals which were decided on the merits.

Exhibit 9 shows that average decision times decreased for every type of appeal in FY 1984. Average decision times ranged from a low of 1.9 months (down from 3.3 months in FY 1983) for miscellaneous appeals to a high of 4.4 months (down from 6.5 months in FY 1983) for denial of within-grade increase appeals. Reduction-in-force appeals had the greatest decrease in average decision time, dropping from 9.7 months in FY 1983 to 4.3 months in FY 1984.

Exhibit 7

DECISION TIMES AT THE REGIONAL OFFICES FOR NON-ATC APPEALS IN FY 1983 AND FY 1984, IN TIME INTERVALS MEASURED IN MONTHS[1]

Decision Time (Months)	FY 1983 Number of Appeals	FY 1983 %	FY 1983 Cumulative % of Appeals	FY 1984 Number of Appeals	FY 1984 %	FY 1984 Cumulative % of Appeals
0 - .99	209	3%	3%	380	5%	5%
1 - 1.99	852	10%	13%	1,301	19%	24%
2 - 2.99	988	12%	25%	1,428	20%	44%
3 - 3.99	1,188	15%	40%	2,314	33%	77%
4 +	4,831	60%	100%	1,606	23%	100%
TOTAL	8,068[2]	100%	100%	7,079	100%	100%
Average Decision Time		6.64 Months			3.75 Months	

1 For the purpose of analysis, 30 days = 1 month.

2 This figure is 8 short of the base number of 8,076 total non-ATC appeals decided by the Regional Offices in FY 1983. This is due to a coding error which resulted in 8 appeals not being detected by the Case Tracking System during its processing scan.

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Exhibit 8

AVERAGE DECISION TIMES AT THE REGIONAL OFFICES FOR NON-ATC APPEALS IN FY 1984, BY OUTCOME OF APPEAL

Outcome	Number of Appeals	Average Case Decision Time (Months)[1]
Appeal dismissed	3,079	2.50
Appeal decided on the merits	3,703	4.81
Other	247	2.89
TOTAL	7,029	3.75

1 For the purpose of analysis, 30 days = 1 month.

Exhibit 9

AVERAGE DECISION TIMES AT THE REGIONAL OFFICES FOR NON-ATC APPEALS IN FY 1983 AND FY 1984, BY TYPE OF APPEAL, IN TIME INTERVALS MEASURED IN MONTHS[1]

Type of Appeal	FY 1983	FY 1984
Adverse Action	6.8	3.8
Disability Retirement	5.7	4.1
Reduction-in-Force	9.7	4.3
Termination of Probationers	3.4	2.0
Denial of Within-Grade (Competence)	6.5	4.4
Miscellaneous	3.3	1.9
Nondisability Retirement	6.4	3.9
Other	6.1	4.1
OVERALL AVERAGE	6.6 months	3.8 months

For the purpose of analysis, 30 days = 1 month.

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Agency Standings

The Regional Offices overturned the actions of some agencies more than others. Exhibit 10 displays the results by agency in FY 1984. It shows the percentage of appeals decisions from each agency which were reached on the merits and the percentage of those in cases in which agency actions were reversed or mitigated. Overall, the reversal/mitigation rate was 23 percent. The Department of Energy had the lowest reversal/mitigation rate (6%), while the Office of Personnel Management (OPM) had the highest (41%). In this latter case, however, it should be noted that only OPM processes and initally decides requests for disability and other retirement actions for Federal employees. OPM's decisions in those cases are appealable to the Board. OPM's unique status in this regard makes them somewhat of a statistical anomaly. The Department of Housing and Urban Development had the next highest reversal/mitigation rate (24%).

Exhibit 10

REGIONAL OFFICE DECISIONS FOR NON-ATC APPEALS IN FY 1984, BY MAJOR AGENCY

	Number Decided	Percent of Total Decisions	Number Decided on the Merits	Percent Decided on the Merits[1]	Number Reversed/ Mitigated[2]	Percent Reversed/ Mitigated[3]
Air Force	377	5%	210	56%	37	18%
Agriculture	167	2%	73	44%	14	20%
Army	607	9%	310	51%	62	20%
Commerce	51	1%	25	49%	3	12%
DoD (Miscellaneous)	173	2%	86	50%	19	22%
Energy	30	1%	17	57%	1	6%
Justice	194	3%	89	46%	16	18%
Labor	91	1%	39	43%	4	10%
HHS	244	3%	151	62%	14	9%
HUD	112	2%	63	56%	15	24%
Interior	260	4%	124	48%	12	10%
Navy	760	11%	409	54%	66	16%
Postal Service	1,247	18%	451	36%	81	18%
Tennessee Valley Authority	130	2%	75	58%	9	12%
Transportation	165	2%	76	46%	9	12%
Treasury	228	3%	132	58%	23	17%
Veterans Administration	438	6%	210	48%	40	19%
Other	347	5%	120	35%	15	13%
Unavailable	44	1%	20	45%	4	20%
OPM[4]	1,364	19%	1,023	75%	424	41%
TOTAL	7,029	100%	3,703	53%	868	23%

1 These figures represent the number of appeals decided on the merits as a percent of the total number of appeals decided for each agency.

2 These figures represent the number of appeals decided on the merits which reversed or mitigated the agency actions.

3 These figures represent the percent of appeals decided on the merits which reversed or mitigated the agency actions.

4 OPM makes the initial determination of agency or employee requests for disability and other retirement. Appeals from those determinations make up the vast majority of Regional Office decisions attributable to OPM.

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Exhibit 11 displays agency results portrayed by type of appeal. It shows that some agencies were reversed more often for certain classes of personnel actions than other agencies. The Department of Defense and OPM, for example, each had 25 percent of their adverse action appeals which were decided on the merits reversed or mitigated, while the Department of Commerce had 25 percent of its reduction-in-force appeals reversed or mitigated.

Exhibit 11

REGIONAL OFFICE DECISIONS FOR NON-ATC APPEALS IN FY 1984 WHICH WERE DECIDED ON THE MERITS AND WHICH REVERSED OR MITIGATED AGENCY ACTIONS, PERCENTAGES BY AGENCY AND TYPE OF APPEAL[1]

	Adverse Action	Reduction in-Force	Termination of Probationers	Denial of Within-Grade (Competence)	Other	Average
Air Force	16% (25)[2]	23% (3)	100% (1)	0% (0)	24% (8)	17% (37)
Agriculture	21% (8)	5% (1)	100% (1)	50% (2)	25% (2)	19% (14)
Army	20% (38)	14% (4)	0% (0)	26% (5)	22% (15)	20% (62)
Commerce	8% (1)	25% (2)	0% (0)	0% (0)	0% (0)	12% (3)
DoD (Misc.)	25% (16)	0% (0)	0% (0)	0% (0)	23% (3)	22% (19)
Energy	0% (0)	0% (0)	0% (1)	0% (0)	33% (1)	6% (1)
Justice	16% (12)	0% (0)	50% (1)	100% (1)	18% (2)	18% (16)
Labor	17% (2)	0% (0)	0% (0)	0% (0)	15% (2)	10% (4)
HHS	12% (5)	5% (3)	0% (0)	10% (1)	13% (5)	9% (14)
HUD	21% (4)	23% (9)	0% (0)	0% (0)	40% (2)	24% (15)
Interior	13% (6)	2% (1)	100% (1)	17% (1)	43% (3)	10% (12)
Navy	16% (54)	16% (4)	40% (2)	17% (1)	12% (5)	16% (66)
Postal Service	17% (75)	0% (0)	0% (0)	0% (0)	55% (6)	18% (81)
Tennessee Valley Authority	24% (9)	0% (0)	0% (0)	0% (0)	0% (0)	12% (9)
Transportation	13% (6)	0% (0)	50% (1)	33% (1)	11% (1)	12% (9)
Treasury	17% (18)	0% (0)	0% (0)	40% (2)	14% (3)	17% (23)
Veterans Administration[3]	18% (30)	9% (1)	0% (0)	100% (1)	21% (7)	19% (40)
Other	9% (6)	5% (1)	0% (0)	0% (0)	29% (8)	13% (15)
Unavailable	33% (3)	0% (0)	0% (0)	100% (1)	0% (0)	20% (4)
OPM[4]	25% (1)	0% (0)	0% (0)	0% (0)	24% (21)	41% (424)
TOTAL[5]	17% (319)	8% (29)	41% (7)	22% (16)	21% (94)	23% (868)

1 The percentages in this exhibit represent the proportions of decisions in each appeal category which were made on the merits of the cases and which reversed or mitigated agency actions.

2 The numbers in parentheses indicate the actual numbers of appeals which were reversed or mitigated.

3 The VA also had one appeal which was listed as "miscellaneous" and which was decided on the merits. All of these appeals reversed or mitigated the agency decision.

4 OPM also makes the initial determination of eligibility for agency or employee requests for disability and other retirement. Appeals from those determinations make up the vast majority of Regional Office decisions attributable to OPM. While not displayed, it is noted that for those appeals of OPM's disability retirement determinations which were decided on the merits, Regional Offices reversed OPM in 59 percent of these cases (353 out of 600. Similarly, 15 percent of OPM's nondisability retirement determinations which were appealed were reversed.

5 A total of 7,029 non-ATC appeals were decided by the Regional Offices in FY 1984.

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Appellant Demographic Characteristics

Exhibits 12 through 17 show the total number of appeals decided, the number of appeals decided on the merits, the number reversed or mitigated, and the percent reversed or mitigated for each of the following employee demographic characteristics: play plan, length of service, veteran status, sex, grade level within pay plan, and age. Each year certain classes of employees have a greater percentage of reversals and mitigations of appeals decided on the merits than do other classes. The distribution varies from year to year and no clear pattern or trend has emerged.

Exhibit 12

REGIONAL OFFICE DECISIONS FOR NON-ATC APPEALS IN FY 1984, BY PAY PLAN OF APPELLANT

Pay Plan	Number Decided	Number Decided on the Merits	Number Decided on Merits which were Reversed/ Mitigated	Percent Decided on Merits which were Reversed/ Mitigated
Wage Grade	1,137	687	137	20%
Post Office	1,056	484	119	25%
General Schedule	3,182	1,721	401	23%
Other	354	142	37	26%
Unavailable	1,300	669	174	26%
TOTAL	7,029	3,703	868	23%

Exhibit 13

REGIONAL OFFICE DECISIONS FOR NON-ATC APPEALS IN FY 1984, BY LENGTH OF SERVICE OF APPELLANT

Service (Years)	Number Decided	Number Decided on the Merits	Number Decided on Merits which were Reversed/ Mitigated	Percent Decided on Merits which were Reversed/ Mitigated
0 - .99	185	16	3	19%
1 - 2.99	322	137	26	19%
3 - 6.99	1,057	560	118	21%
7 - 14.99	1,757	1,103	252	23%
15 +	2,058	1,299	392	30%
UNKNOWN[1]	1,650	588	77	13%
TOTAL	7,029	3,703	868	23%

1 Cases which were either incompletely coded when entered into the Case Tracking System or which lacked the necessary service computation dates.

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Exhibit 14

REGIONAL OFFICE DECISIONS FOR NON-ATC APPEALS IN FY 1984,
BY VETERAN STATUS OF APPELLANT

Veteran Status	Number Decided	Number Decided on the Merits	Number Decided on Merits which were Reversed/ Mitigated	Percent Decided on Merits which were Reversed/ Mitigated
Veteran	3,250	1,700	368	22%
Nonveteran	2,193	1,208	262	22%
Unknown	1,586	795	238	30%
TOTAL	7,029	3,703	868	23%

Exhibit 15

REGIONAL OFFICE DECISIONS FOR NON-ATC APPEALS IN FY 1984,
BY SEX OF APPELLANT

Sex	Number Decided	Number Decided on the Merits	Number Decided on Merits which were Reversed/ Mitigated	Percent Decided on Merits which were Reversed/ Mitigated
Female	1,738	953	259	27%
Male	5,259	2,724	608	22%
Unknown	32	26	1	4%
TOTAL	7,029	3,703	868	23%

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Exhibit 16

REGIONAL OFFICE DECISIONS FOR NON-ATC APPEALS IN FY 1984, BY GRADE LEVEL WITHIN PAY PLAN OF APPELLANT[1]

Pay Plan		Number Decided	Number Decided on the Merits	Number Decided on Merits which were Reversed/ Mitigated	Percent Decided on Merits which were Reversed/ Mitigated
Wage Grade	1-5	56	32	5	16%
	6-10	101	62	16	26%
	11-15	26	17	3	18%
	16+	7	5	1	20%
	Unavailable	947	571	112	20%
	TOTAL	1,137	687	137	20%
General Schedule	1-5	1,120	584	123	21%
	6-10	997	550	144	26%
	11-15	1,040	579	134	23%
	16+[2]	1	1	0	0%
	Unavailable	24	7	0	0%
	TOTAL	3,182	1,721	401	23%
Post Office	1-5	859	386	93	24%
	6-10	124	59	16	27%
	11-15	45	23	5	22%
	16+	19	7	3	43%
	Unavailable	9	9	2	22%
	TOTAL	1,056	484	119	25%

1 This exhibit is a more detailed display of Exhibit 12.

2 The Senior Executive Service is not included in this breakdown.

Exhibit 17

REGIONAL OFFICE DECISIONS FOR NON-ATC APPEALS IN FY 1984, BY AGE OF APPELLANT

Age	Number Decided	Number Decided on the Merits	Number Decided on Merits which were Reversed/ Mitigated	Percent Decided on Merits which were Reversed/ Mitigated
15-19	1	1	0	0%
20-24	71	26	3	12%
25-29	447	218	37	17%
30-34	873	471	75	16%
35-39	962	552	113	20%
40-44	727	414	92	22%
45-49	729	464	116	25%
50-54	822	527	159	30%
55-59	612	374	128	34%
60+	623	411	92	22%
Unknown	1,162	245	53	22%
TOTAL	7,029	3,703	868	23%

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C. CONCLUDING OBSERVATIONS

A summary of the processing of appeals in the Regional Offices for FY 1984 is as follows:

The Regional Offices had issued decisions on all Air Traffic Controller appeals prior to the start of FY 1984. The total number of non-ATC appeals decided by the Regional Offices in FY 1984 was 7,029, a 13 percent decrease from the FY 1983 total of 8,076 appeals decided.

The Regional Offices held hearings on 3,316 non-ATC appeals decided in FY 1984. This was a 17 percent increase over the 2,824 hearings held on non-ATC appeals decided in FY 1983.

A slightly greater percentage of non-ATC appeals was decided on the merits of the cases in FY 1984 (53%) than in FY 1983 (50%). For appeals decided on the merits in FY 1984, the Regional Offices reversed or mitigated almost the same overall percentage as they did in FY 1983, i.e., of all non-ATC appeals decided on the merits in FY 1984, 87 percent left the agency action effectively unchanged (compared to 86 percent in FY 1983). Only 10 percent of all reversals for non-ATC appeals in FY 1984 were based on a finding that harmful procedural error had occurred.

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CHAPTER 3

THE BOARD

A. INTRODUCTION

Agencies or appellants, when dissatisfied with the outcome of a Regional Office decision, may request that the Board review the case by filing a Petition for Review (PFR) within 35 days of the issuance of the Regional Office decision. The Special Counsel and the Director of the Office of Personnel Management (OPM) may also make such requests and the Board itself may decide to reopen and reconsider a case on its own motion.

Each PFR is examined by the Board in light of criteria specified in the Code of Federal Regulations.[1] A determination is then made as to whether to grant[2] or deny the PFR. If a PFR is granted, the Board will either affirm or overturn the Regional Office decision. If the Board decides to deny the Petition for Review, then the initial decision made by the Regional Office stands and becomes the final decision of the Board. It should be noted that the Board considers and decides all PFR's filed. A PFR is granted most commonly in order to reverse the Regional Office decision or to address an issue and offer guidance on it.

All references to ATC decisions or PFR's in this report represent the number (or percent) of ATC PFR's which were finally decided, either individually or as part of a consolidation[3], by the Board in FY 1984. The number of ATC PFR's processed at the Board required that the adjudication of the ATC petitions be spread over a two-year period (i.e., FY 1983 and FY 1984). It would therefore be both misleading and incorrect to draw any comparisons between FY 1983 and FY 1984 ATC statistics. For this reason, the findings and text relative to ATC PFR's in this edition of the "Appeals Study" present FY 1984 data only.

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[1]Section 1201.115 of Title 5 of the Code of Federal Regulations states that "[a]fter providing an opportunity for response by other parties, the Board may grant a petition for review when it is established that:
(a) New and material evidence is available that, despite due diligence, was not available when the record was closed; or
(b) The decision of the presiding official is based on an erroneous interpretation of statute or regulation.

[2]A decision by the Board to reopen a case.

[3]Numerous PFR's were consolidated by the Board for convenience in processing so that individual petitions could be more expeditiously adjudicated without adversely affecting any party.

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Major Findings

Based on an analysis of data on petitions to the Board during fiscal year 1984, and where appropriate, the corresponding figures for fiscal year 1983, the major findings are as follows:[4]

- The total number of PFR's decided by the Board increased significantly from FY 1983 to FY 1984 — rising from 3,881 to 5,223. This included 2,737 non-ATC PFR's and PFR's covering 2,486 Air Traffic Controllers. The number of non-ATC PFR's decided increased by almost 200 percent (from 916 to 2,737) from FY 1983 to FY 1984.

- Employees filed the majority (2,330 of 2,737) of the non-ATC PFR's decided by the Board. Of the remaining 407 non-ATC PFR's, 370 were filed by agencies, 32 were filed by both agencies and employees, and 5 were filed by OPM. Employees also filed the bulk of the ATC PFR's (2,204 of 2,486). Of the remaining 282 ATC PFR's, 63 were filed by the agency and 219 were filed by both the agency and the employees.

- The Board decided to grant (reopen) 365 non-ATC cases in FY 1984. These 365 cases represent 13 percent of the 2,737 non-ATC PFR's decided by the Board that year. The Board also decided to grant 967 ATC cases, which represent 39 percent of the 2,486 ATC PFR's decided in FY 1984.

- Overall, the Board overturned proportionately fewer non-ATC Regional Office decisions in FY 1984 than in FY 1983. Of the 2,737 non-ATC PFR's decided in FY 1984, 223 (8%) resulted in the Regional Office decision being overturned, down from 12 percent (106 of 916 PFR's decided) in FY 1983.

- In FY 1984, 106 (5%) of the 2,330 non-ATC PFR's filed by employees resulted in the Regional Office decision being overturned. Of the 370 non-ATC PFR's filed by agencies, 109 (29%) resulted in the Regional Office decision being overturned.

- From a different perspective, of the 365 non-ATC PFR's granted in FY 1984, 181 were filed by employees. In 106 (59%) of these 181 cases, the Board overturned the Regional Office decision. Similarly, 171 of

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[4]The data used for this report were extracted from the Board's Case Tracking System, a computerized data base management system. It should be noted that over a five-year period approximately 835 Board decisions on Petitions for Review related to attorney fee, compliance, and enforcement issues. The data for these "special cases" are not currently included in the data retrieved through the Case Tracking System and, therefore, are not included among the decision totals listed in this chapter.

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the 365 non-ATC PFR's granted in FY 1984 were filed by agencies. In 109 (64%) of these 171 cases, the Regional Office decision was also overturned.

- Of the 2,737 non-ATC PFR's decided in FY 1984, agencies prevailed[5] more frequently (86% of all non-ATC PFR's decided) than employees (13% of all non-ATC PFR's decided). Agencies also prevailed at a slightly higher rate then did employees for the 365 non-ATC PFR's which were granted (50% vs. 46%).

- Eighty-two percent (790 of 967) of the ATC PFR's granted ended in final decisions whereby the Federal Aviation Administration prevailed and removals of the employees remained in force.

- The average time to process a non-ATC PFR for cases decided in FY 1984 decreased to 8.9 months from the FY 1983 average of 10.6 months. The average time to process an ATC PFR for cases decided in FY 1984 was 8.8 months. Sixty-three percent of the non-ATC PFR's were decided in seven months or less, up from 43 percent in FY 1983.

B. FINDINGS

In this section we will address the data under the following subheadings: **Number of PFR's Decided, Who Requested the Reviews, Petitions for Review Granted, Impact on Regional Office Decisions, Comparison of Employee and Agency "Success Rates" for PFR's Granted,** and **Decision Times.** Where appropriate, we have included the corresponding figures for fiscal year 1983 to illustrate changes which may have occurred from year to year.

Number of PFR's Decided

The total number of PFR's decided by the Board increased significantly from FY 1983 to FY 1984 — 5,223 PFR's were decided in FY 1984 compared to 3,881 PFR's decided in FY 1983. The majority of the FY 1984 PFR's involved non-ATC appeals (2,737 non-ATC PFR's decided), while the remaining 2,486 were petitions filed by former Air Traffic Controllers (see Exhibits 18 and 19).

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[5]An agency prevailed 1) when the Board did not grant an employee PFR, leaving intact a Regional Office decision favorable to the agency, 2) when the Board granted an employee PFR and subsequently affirmed a Regional Office decision favorable to the agency, or 3) when the Board granted an agency PFR and overturned a Regional Office decision which was unfavorable to the agency.

An employee prevailed 1) when the Board did not grant an agency PFR, leaving intact a Regional Office decision favorable to the employee, 2) when the Board granted an agency PFR and subsequently affirmed a Regional Office decision favorable to the employee, or 3) when the Board granted an employee PFR and overturned a Regional Office decision which was unfavorable to the employee.

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Exhibit 18

BOARD DECISIONS FOR NON-ATC PETITIONS FOR REVIEW IN FY 1983 AND FY 1984, BY TYPE OF PETITIONER

Type of Petitioner	Number of Petitions For Review Decided	Number of Petitions For Review Granted	Percent Granted	Number of PFR's Granted that overturned[1] Regional Office Decisions	Percent of PFR's Granted that overturned Regional Office Decisions
FY 1983					
Agency	80	58	72%	26	45%
Employee	835	113	14%	80	71%
Other	1	0	0%	0	0%
TOTAL	**916**	**171**	**19%**	**106**	**62%**
FY 1984					
Agency	370	171	46%	109	64%
Employee	2,330	181	8%	106	59%
OPM	5	4	80%	3	75%
Both (Agency and Employee)	32	9	28%	5	56%
TOTAL	**2,737**	**365**	**13%**	**223**	**61%**

[1] In the text of this report, the Regional Office decision is considered to have been overturned when the Board grants the PFR and reverses, remands, mitigates, or vacates the decision.

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Exhibit 19

BOARD DECISIONS[1] FOR AIR TRAFFIC CONTROLLER PETITIONS FOR REVIEW IN FY 1983 AND FY 1984, BY TYPE OF PETITIONER

Type of Petitioner	Number of Petitions For Review Decided	Number of Petitions For Review Granted	Percent Granted	Number of PFR's Granted where the Agency Prevailed[2]	Percent of PFR's Granted where the Agency Prevailed
		FY 1983			
Agency Only	228	202	89%	191	95%
Employee Only	2,515	471	19%	401	85%
Agency and Employee	222	159	72%	156	98%
TOTAL	2,965[3]	832	28%	748	90%
		FY 1984			
Agency Only	63	32	51%	27	84%
Employee Only	2,204	743	34%	638	86%
Agency and Employee	219	192	88%	125	65%
TOTAL	2,486	967	39%	790	82%

1 All references to ATC decisions or PFR's in this report represent the number (or percent) of PFR's which were finally decided, either individually or as part of a consolidation, by the Board in FY 1983 and 1984.

2 The dominant issue addressed in ATC Petitions for Review was whether or not an employee's removal would be sustained on appeal or whether that employee could return to work as an Air Traffic Controller. A secondary issue dealt with the legitimacy of suspensions associated with the removals. In a number of instances, the FAA filed a PFR on the outcome of the suspension issue, while the employee filed a PFR on the removal issue. For the purposes of this report, we define that the FAA prevailed whenever the outcome of the final decision resulted in the employee's removal being sustained. The figures in this column do not reflect the number of times the FAA prevailed due to appellants' PFR's being denied.

3 This figure represents the total number of PFR's which were finally decided by the Board in FY 1983. Although over 5,000 appellants originally petitioned the Board in FY 1983, a number of them subsequently withdrew their PFR's before they could be adjudicated by the Board. Final action on other appeals was not taken until FY 1984.

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Exhibit 20 shows the breakdown on non-ATC PFR's by type of appeal. Most agency requests for PFR's in FY 1984 were based on adverse action or reduction-in-force appeals decisions. The vast majority of employee requests stemmed from adverse action appeals decisions, with reduction-in-force and disability retirement appeals decisions forming the basis for most of the other PFR's decided.

Exhibit 20

BOARD DECISIONS FOR NON-ATC PETITIONS FOR REVIEW
IN FY 1984,
BY TYPE OF APPEAL AND TYPE OF PETITIONER

Type of Appeal	Filed by Agency	Filed by Employee	Filed by OPM	Total
Adverse Action	269	1,268	1	1,538
Reduction-in-Force	53	267	0	320
Disability Retirement	19	313	0	332
Denial of Within-Grade (Competence)	13	65	0	78
Termination of Probationers	2	85	0	87
Nondisability Retirement	19	121	0	140
Miscellaneous	0	102	0	102
Performance	4	56	0	60
Other	23	85	4	112
TOTAL	402	2,362	5	2,769[1]

[1] There were 2,737 PFR's decided in FY 1984. This figure is higher because 32 petitions filed by both the agencies and employees were counted twice by the Case Tracking System.

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The number of non-ATC PFR's decided by the Board increased by almost 200 percent from FY 1983 to FY 1984 (from 916 to 2,737) (see Exhibit 18). This increase is primarily the result of the elimination by the Board in FY 1984 of the non-ATC PFR's left pending at the end of FY 1983. The unusually large number of pending PFR's was attributable to the extraordinary nature of the Board's workload during FY 1983 and to the unique processing requirements necessitated by the Air Traffic Controller phenomenon.

Who Requested The Reviews

For both non-ATC and ATC appeals, most of the PFR's that the Board decided had been filed by employees. Exhibit 18 shows the number of non-ATC PFR's that were decided at the Board level by type of petitioner. Employees filed the majority (2,330 of 2,737) of the non-ATC PFR's decided by the Board. Of the remaining 407 PFR's, 370 were filed by agencies, 32 were filed by both the agencies and employees, and 5 were filed by OPM as a third party. Exhibit 19 shows the ATC Board decisions on PFR's for FY 1983 and FY 1984 by type of petitioner. In FY 1984 the bulk (2,204 of 2,486) of the ATC PFR's were filed by employees. Of the remaining 282 ATC PFR's, 63 were filed by the agency and 219 were filed by both the agency and the employees.

Petitions for Review Granted

Exhibit 18 shows that, overall, 365 of 2,737 (13%) of the non-ATC Petitions for Review were granted (reopened) in FY 1984, down from 19 percent (171 of 916) in FY 1983. Approximately half (181 of 365) of the non-ATC PFR's granted were filed by employees and half filed by agencies (171 of 365). Nine of those granted were filed by both agencies and employees and four of those granted were filed by OPM. In proportion to the numbers filed, non-ATC PFR's filed by agencies were granted more frequently than were PFR's filed by employees [46% (171 of 370) vs. 8% (181 of 2,330)]. Petitions for review filed by both an agency and an employee were granted 28 percent of the time (9 of 32), and PFR's filed by OPM were granted in four (80%) of five requests.

Exhibit 19 shows that the Board granted 967 (39%) of the 2,486 ATC PFR's filed by any party in FY 1984. Although a greater number of employee PFR's (743) were granted than were agency PFR's (32), the agency was proportionately more successful in having its ATC PFR's granted by the Board than were employees. Fifty-one percent (32 out of 63) of the agency ATC PFR's filed were granted in FY 1984, 34 percent (743 out of 2,204) of the employee ATC PFR's filed were granted, and 88 percent (192 of 219) of the PFR's filed by both the agency and the employees were granted (see Exhibit 19).

Impact on Regional Office Decisions

When issuing a final decision in a case, the Board may either: 1) leave the Regional Office decision unchanged by not granting the PFR or by granting the PFR and affirming the Regional Office decision; or 2) overturn the Regional Office decision by granting the PFR and reversing, remanding, mitigating, or vacating the decision.

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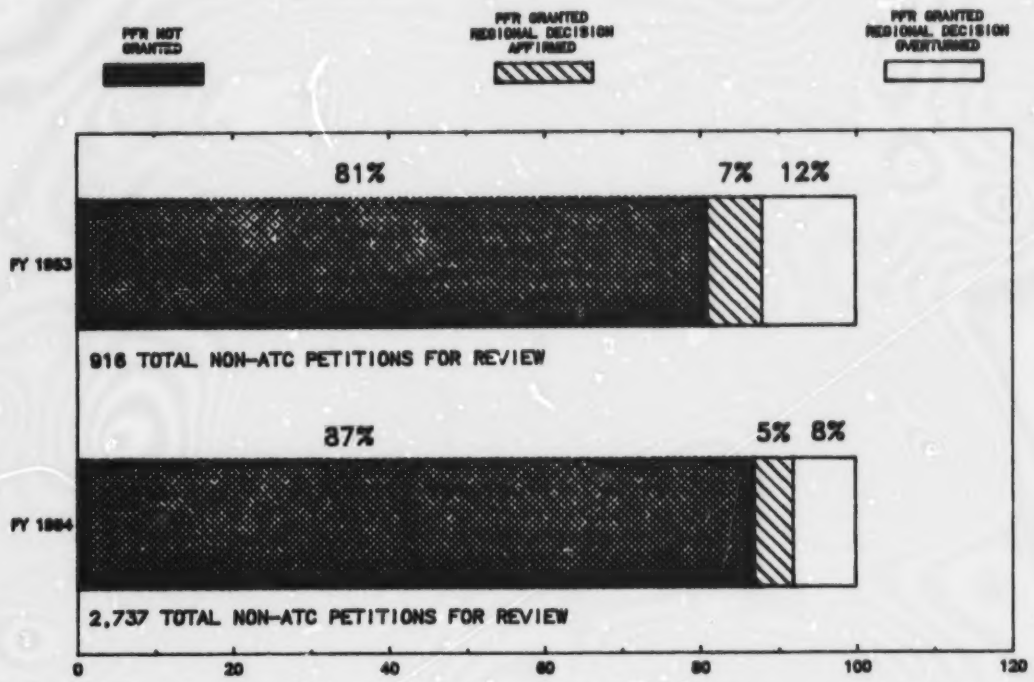
Figure 3 provides a visual comparison of the proportions of Regional Office decisions for all non-ATC PFR's decided that were left unchanged by the Board and those that were overturned for FY 1983 and FY 1984. It shows that Regional Office decisions for all parties were overturned by the Board proportionately less often in FY 1984 than in FY 1983. The Board both granted the PFR's and overturned Regional Office decisions in 8 percent (223 of 2,737) of the non-ATC PFR's decided in FY 1984, down from 12 percent (106 of 916) in FY 1983. In other words, Regional Office decisions were effectively affirmed in 92 percent[6] of all the non-ATC PFR's decided in FY 1984.

FIGURE 3

OUTCOME OF BOARD DECISIONS ON ALL NON-ATC PETITIONS FOR REVIEW



[6]In FY 1984, 87 percent of the non-ATC PFR's were not granted, leaving the Regional Office decision unchanged. An additional 5 percent of all non-ATC PFR's decided in FY 1984 were granted but eventually affirmed the Regional Office decision.

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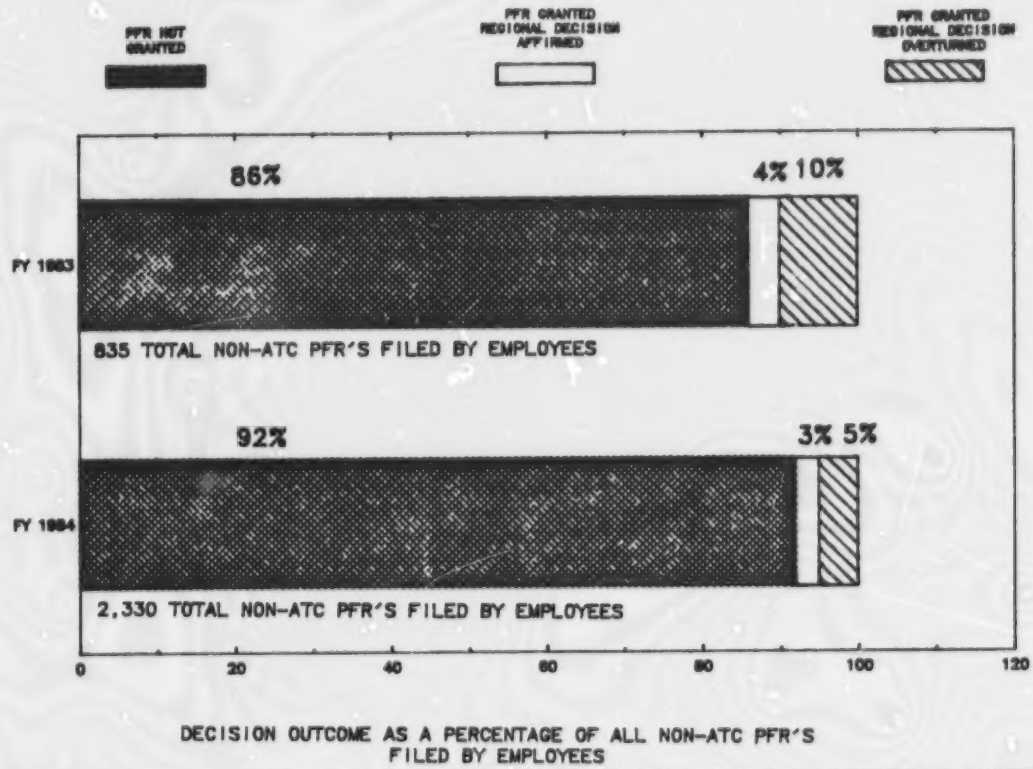
Figure 4 presents, for FY 1983 and FY 1984, the overall results of non-ATC PFR's filed by employees, and Figure 5 presents the comparable results for non-ATC PFR's filed by agencies. As can be seen in Figure 4, 5 percent[7] (106 of 2,330) of the Board's decisions in FY 1984 on PFR's filed by employees resulted in the PFR being granted and the Regional Office decision being overturned, down from 10 percent in FY 1983. The comparable figure for FY 1984 Board decisions on non-ATC PFR's filed by agencies (see Figure 5), was 29 percent (109 of 370), down from 33 percent in FY 1983. Figure 4 also shows that 95 percent of the Board's FY 1984 decisions on employee filed PFR's resulted in the Regional Offices' decisions being left unchanged, either because the PFR's were not granted (92%) or because the PFR's were granted but the Regional Offices' decisions were affirmed by the Board (3%).

Looking at just the PFR's that the Board decided to grant (reopen) (and as shown in Exhibit 18), the Board overturned Regional Office decisions in 61 percent (223 of 365) of all the non-ATC PFR's which it granted in FY 1984, down just slightly from 62 percent (106 of 171) in FY 1983.

FIGURE 4

OUTCOME OF BOARD DECISIONS ON NON-ATC PFR'S FILED BY EMPLOYEES



[7]Although the overall "success rate" for employees at the Board was only 5 percent, it should be noted that the employee success rate at the Regional Offices was significantly higher. Of the appeals decided on the merits at the Regional Offices, 23 percent reversed or mitigated agency actions.

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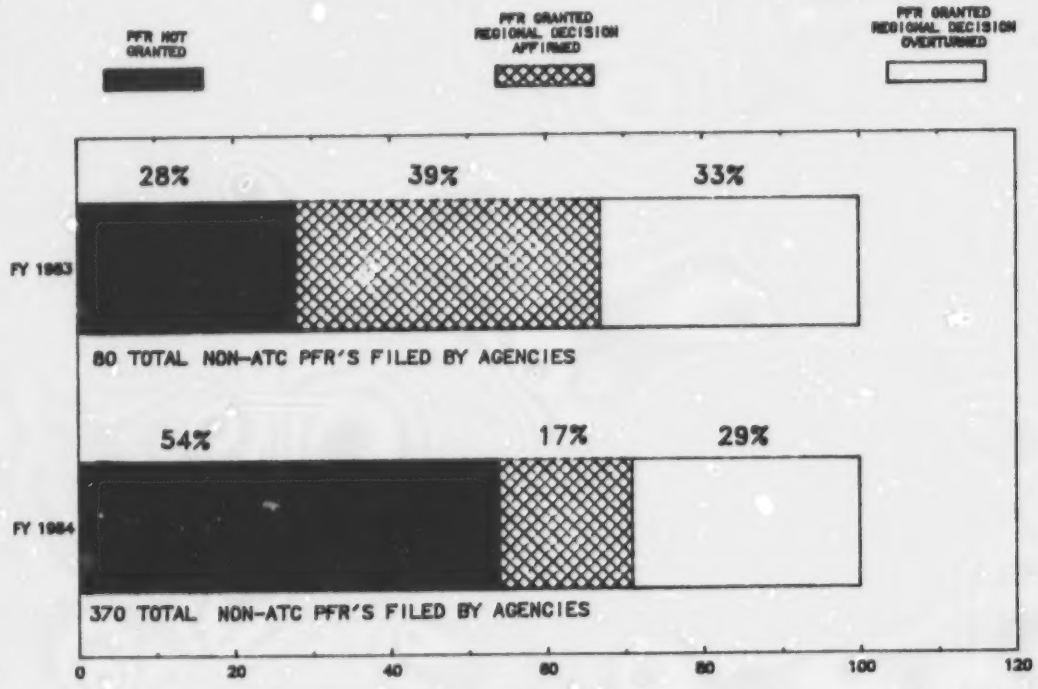
FIGURE 5

OUTCOME OF BOARD DECISIONS ON NON-ATC PFR'S FILED BY AGENCIES



For those non-ATC PFR's that were granted, the Board more frequently overturned Regional Office decisions on PFR's filed by agencies than for those filed by employees. Referring once again to Exhibit 18, we see that in FY 1984 the Board overturned 106 of 181 (59%) of the Regional Office decisions relative to non-ATC PFR's filed by employees and subsequently granted by the Board. Similarly, the Board overturned 109 of 171 (64%) of the Regional Office decisions for non-ATC PFR's filed by agencies and granted by the Board. In FY 1983, the comparable rates at which Regional Office decisions were overturned were 71 percent for employee filed PFR's which were granted and 45 percent for agency filed PFR's which were granted.

Comparison of Employee and Agency "Success Rates" for PFR's Granted

For the purposes of this report, an employee or an agency who is a party to a Petition for Review is considered to have "prevailed" when the Board's decision on that PFR is favorable to them. For a non-ATC PFR, therefore, an employee prevails when any of the following possible results occur: 1) the

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Board decides not to grant a PFR filed by an agency, thereby letting a Regional Office decision favorable to the employee stand; 2) the Board grants a PFR filed by an agency but then decides not to overturn a decision of the Regional Office favorable to the employee; or, 3) the Board grants a PFR filed by an employee and decides to overturn a Regional Office decision that had been favorable to the agency. Likewise, an agency prevails on a non-ATC PFR when any of the following occurs: 1) the Board decides not to grant a PFR filed by an employee, thereby letting a Regional Office decision favorable to the agency stand; 2) the Board grants a PFR filed by an employee but decides not to overturn a Regional Office decision favorable to the involved agency; or 3) the Board grants a PFR filed by an agency and decides to overturn the Regional Office decision favorable to the involved employee.

For all non-ATC PFR's decided in FY 1984 (2,737 PFR's), agencies were more likely to prevail, i.e., agencies prevailed in 86 percent[8] of all non-ATC PFR's decided while employees prevailed in 13 percent[9] (see Figure 6). FY 1983 figures were almost identical, with agencies prevailing in 86 percent of all non-ATC PFR's decided and employees prevailing in 14 percent. If consideration is given to just the 365 non-ATC PFR's which were granted in FY 1984, agencies still prevailed at a slightly higher rate than did employees. Agencies prevailed in 184 (50%) of the total of 365 PFR's granted, while employees prevailed in 168 (46%) cases (see Exhibit 18). FY 1983 figures were 35 percent for agencies and 65 percent for employees.

For ATC PFR's the Federal Aviation Administration (FAA) was considered to have prevailed whenever the final decision resulted in the employee's removal remaining in force. Overall, as shown in Exhibit 19, the FAA prevailed in 82 percent (790 of 967) of the ATC PFR's granted, and employees regained their jobs in the remaining 18 percent (177 of 967) of the cases.

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[8]Seventy-nine percent of all the non-ATC PFR's decided by the Board in FY 1984 were favorable to the agency involved because they were not granted and thus left unchanged a Regional Office decision favorable to the agency. Another seven percent of all the non-ATC PFR's decided by the Board in FY 1984 were also favorable to the agency involved because they were granted by the Board and a Regional Office decision unfavorable to the agency was overturned or a Regional Office decision favorable to the agency was left unchanged.

[9]Six percent of all the non-ATC PFR's decided by the Board in FY 1984 were favorable to the employee(s) involved because they were not granted and thus left unchanged a Regional Office decision favorable to the employee(s). Another seven percent of all the non-ATC PFR's decided by the Board in FY 1984 were also favorable to the employee(s) involved because they were granted by the Board and a Regional Office decision unfavorable to the employee(s) was overturned or a Regional Office decision favorable to the employee(s) was left unchanged.

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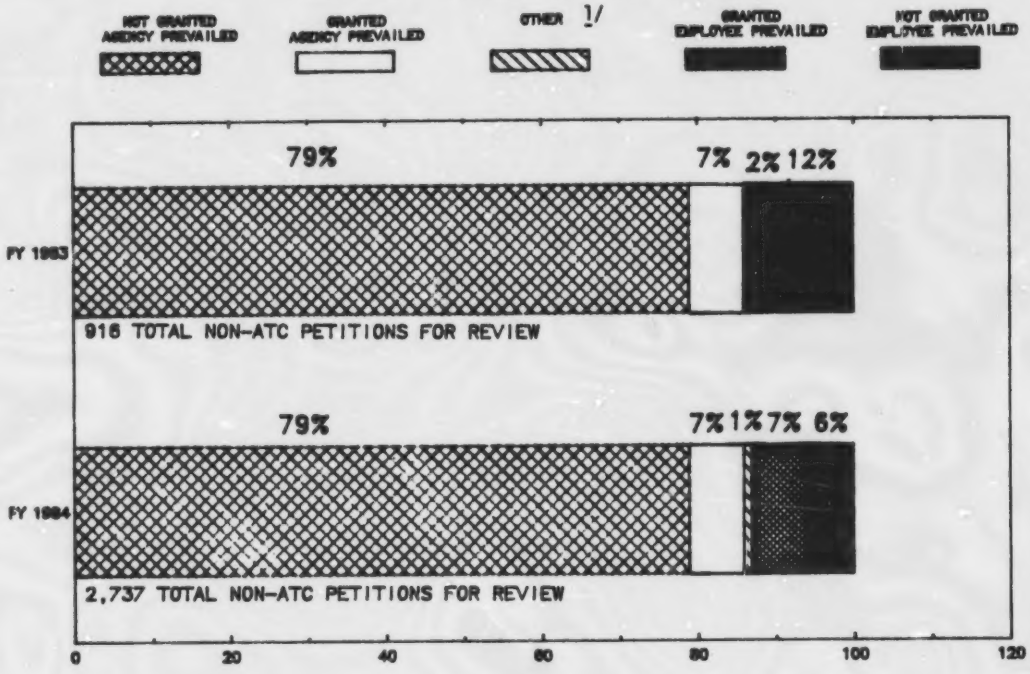
FIGURE 8

BOARD DECISIONS FOR NON-ATC PETITIONS FOR REVIEW
BY PETITIONER AND BY OUTCOME



1/PFR's filed by either OPM or by both agencies and employees. Four (80%) of the five OPM requested PFR's were granted and three (75%) of those four overturned the Regional Office decision. Nine (28%) of the thirty-two PFR's requested by both agencies and employees were granted. Five (56%) of those nine overturned the Regional Office decision (see also Exhibit 18).

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Decision Times

Exhibit 21 shows that the average time to decide a non-ATC PFR in FY 1984 was 8.90 months. This is a decrease of 1.71 months over the FY 1983 average of 10.61 months. Exhibit 22 shows the number of PFR's, the percent of PFR's, and the cumulative percent of PFR's decided in time intervals measured in months for PFR's decided in FY 1984.[10] This illustrates that 63 percent of the PFR's were decided in less than 8 months during FY 1984, up from 43 percent in FY 1983.[11]

Exhibit 21

AVERAGE DECISION TIMES AT THE BOARD FOR NON-ATC PETITIONS FOR REVIEW IN FY 1983 AND FY 1984, BY OUTCOME OF PETITION FOR REVIEW

Outcome of Petition for Review	FY 1983 Average Decision Time (Months)[1]		FY 1984 Average Decision Time (Months)	
Petitions Denied[2]	9.66	(745)	12.50	(2,354)
Petitions Granted	17.00	(171)	14.03	(365)
Petitions Withdrawn	—		3.80	(18)
OVERALL AVERAGE	10.61	(916)	8.90	(2,737)

1 For the purpose of analysis, 30 days = 1 month.

2 "Petitions Denied" includes "petitions dismissed" (with a FY 1984 average decision time of 9.50 months) and "short-form denials" (with a FY 1984 average decision time of 7.10 months).

[10]For 1983 figures, see Study of MSPB Appeals Decisions for FY 1983, p. 56.

[11]Ibid.

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Exhibit 22

DECISION TIMES AT THE BOARD FOR NON-ATC PETITIONS FOR REVIEW IN FY 1984

Case Decision Time (Months)[1]	Number of PFR's	Percent of PFR's	Cumulative Percent of of PFR's
0 - .99	6	0.22%	0.22%
1 - 1.99	121	4.42%	4.64%
2 - 2.99	288	10.52%	15.16%
3 - 3.99	343	12.53%	27.69%
4 - 4.99	290	10.60%	38.29%
5 - 5.99	258	9.43%	47.72%
6 - 6.99	223	8.15%	55.87%
7 - 7.99	183	6.69%	62.56%
8 +	1,025	37.44%	100.00%
TOTAL	2,737	100.00%	

1 For the purpose of analysis, 30 days = 1 month.

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As shown in Exhibit 23, the average decision time for non-ATC PFR's differed markedly by the type of appeal. On average, termination of probationers appeals were decided most rapidly, with reduction-in-force appeals taking the longest amount of time to decide. In comparison to FY 1983, the average PFR decision time decreased for adverse action appeals (from 11.77 to 8.86 months), reduction-in-force appeals (from 13.03 to 12.63 months), and for termination of probationers appeals (from 6.63 to 5.75 months). Exhibit 24 shows that the average time to decide an ATC PFR in FY 1984 was 8.8 months.

Exhibit 23

AVERAGE DECISION TIMES AT THE BOARD FOR NON-ATC PETITIONS FOR REVIEW IN FY 1983 AND FY 1984, BY TYPE OF APPEAL

Type of Appeal	FY 1983 Average Decision Time (Months)[1]	FY 1984 Average Decision Time (Months)
Adverse Action	11.77	8.86
Reduction-in-Force	13.03	12.63
Disability Retirement	7.17	7.38
Denial of Within-Grade (Competence)	10.97	11.22
Termination of Probationers	6.63	5.75
Nondisability Retirement	7.77	8.38
Miscellaneous	7.60	6.02
Performance	—	7.58
Other	9.02[2]/	8.10
OVERALL AVERAGE	10.61	8.90

1 For the purpose of analysis, 30 days = 1 month.

2 Includes appeals for performance-based (Part 432) actions.

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Exhibit 24

AVERAGE DECISION TIMES AT THE BOARD FOR AIR TRAFFIC CONTROLLER PETITIONS FOR REVIEW IN FY 1983 AND FY 1984, BY OUTCOME OF PETITION FOR REVIEW

Outcome of Petition for Review	FY 1983 Average Decision Time (Months)[1]	FY 1984 Average Decision Time (Months)
Petitions Denied[2]	5.80	8.70
Petitions Granted	6.72	9.10
Petitions Withdrawn	—	6.30
OVERALL AVERAGE	6.06	8.80

1 For the purpose of analysis, 30 days = 1 month.

2 "Petitions Denied" is comprised of "petitions denied" (with a FY 1984 average decision time of 8.90 months), "petitions dismissed" (with a FY 1984 average decision time of 7.30 months), and "short-form denials" (with a FY 1984 average decision time of 8.40 months).

C. CONCLUDING OBSERVATIONS

A summary of the processing of PFR's at the Board for FY 1984 is as follows:

The Board decided 2,737 non-ATC PFR's and PFR's covering 2,486 Air Traffic Controllers in FY 1984. The total number of 5,223 PFR's decided in FY 1984 was a significant increase over the total of 3,881 PFR's decided in FY 1983.

The Board granted (reopened) 13 percent of all the non-ATC PFR's decided and 39 percent of all the ATC PFR's decided. Employee PFR's, both non-ATC and ATC, were granted proportionately less frequently than were agency PFR's.

The Board effectively affirmed a slightly greater proportion (2,514 of 2,737 or 92%) of non-ATC Regional Office decisions in FY 1984 than in FY 1983 (810 of 916 or 88%). In FY 1984, five percent (106 out of 2,330) of employee filed non-ATC PFR's and 29 percent (109 out of 370) of agency filed non-ATC PFR's resulted in the applicable Regional Office decision being overturned. FY 1983 figures were 10 percent for employees and 33 percent for agencies.

The Federal Aviation Administration of the U.S. Department of Transportation prevailed (i.e., applicable employee removals remained in force) in 82 percent of the ATC PFR's granted.

On a proportional basis, once a non-ATC PFR was granted (an applicable case reopened) agencies were only slightly more likely than employees to prevail on the PFR. In FY 1984, the Board granted 171 non-ATC PFR's filed by agencies and overturned the related Regional Office decision in 109 (64%) of the cases. The Board also granted 181 non-ATC PFR's filed by employees and overturned the Regional Office decision in 106 (59%) of these cases.

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CHAPTER 4

FIVE-YEAR TRENDS

A. INTRODUCTION

With the publication of this, the fifth annual study of MSPB appeals decisions, it becomes possible for the first time to examine appeal trends over an extended and defined period of time; in this instance, FY 1980 through FY 1984. In order to facilitate analysis and comparison, the data for this five-year period is presented in a format which closely corresponds to that of our year-to-year analysis.[1]

Major Findings

This chapter portrays trends at MSPB during the period of FY 1980 through FY 1984 by focusing separately on Regional Office and Board decisions. Based on an analysis of available data on appeals to MSPB during that period, the major findings are as follows:

Regional Offices

- There were 40,634 appeals [11,360 Air Traffic Controller (ATC) and 29,274 other (non-ATC) appeals] decided by the Regional Offices during the combined fiscal years of 1980 through 1984. Workload for the Regional Offices was at its lowest level in FY 1980, with a total of 3,641 appeals decided. Regional Office workload was at its highest level in FY 1983, largely as a result of the Air Traffic Controller appeals, with 18,878 appeals decided. Fifty-seven percent (10,802) of the FY 1983 workload consisted of ATC appeals.[2]

- The Regional Offices issued decisions on 3,641 non-ATC appeals in FY 1980; 5,610 in FY 1981; 4,918 in FY 1982; 8,076 in FY 1983; and 7,029 in FY 1984.

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[1]It should be noted that because the Board's Case Tracking System was not fully operational for the entire five-year period, some of the statistical information reflecting activities both at the Regional Offices and at the Board in FY 1980 was unavailable and, therefore, is not reported here.

[2]Since the Regional Offices decided ATC appeals in FY 1982 and FY 1983 only, most of the analysis in this portion of the report relates to non-ATC appeals only.

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- Adverse action appeals were the type of appeal most frequently decided by the Regional Offices during the five-year period. The combined number of adverse action appeals decided during this period was 14,195.[3] This number represents 49 percent of all non-ATC appeals decided.

- The numbers of non-ATC appeals from agency actions based solely on inadequate employee performance were 59 in FY 1980, 13 in FY 1981, and 36 In FY 1982. These numbers increased significantly both in FY 1983 and in FY 1984, with 207 and 420 performance-based appeals decided in each of those years, respectively.

- The Regional Offices held hearings on 1,394 non-ATC appeals decided in FY 1980; 2,345 in FY 1981; 1,589 in FY 1982; 2,824 in FY 1983; and 3,316 in FY 1984. From another perspective, hearings were held for 38 percent of all the appeals decided in FY 1980, 42 percent in FY 1981, 32 percent in FY 1982, 35 percent in FY 1983, and 47 percent in FY 1984.

- The Regional Offices left the agency action being appealed effectively unchanged (either by rejecting the appeal or by affirming the agency action) in 81 percent of the non-ATC appeals decided in FY 1980, 74 percent in FY 1981, 88 percent in FY 1982, 86 percent in FY 1983, and 87 percent in FY 1984.

- Harmful procedural errors accounted for Regional Office reversals of agency actions in 13 percent of all non-ATC reversals in FY 1980, 8 percent in FY 1981, 27 percent in FY 1982, 8 percent in FY 1983, and 10 percent in FY 1984. On the average during the five-year period, 12 percent of all reversals of agency actions were due to harmful procedural errors.

- For the entire five-year period, once an appeal was reached "on the merits," the applicable agency action was affirmed in 73 percent (11,184 of 15,434) of the appeals. The Regional Offices reversed or mitigated 29 percent of the non-ATC appeals decided on the merits in FY 1980, 33 percent in FY 1981, 24 percent in FY 1982, 27 percent in FY 1983, and 23 percent in FY 1984.

- For the five-year period, 46 percent (13,350 of 29,274) of all non-ATC appeals were dismissed by the Regional Offices without a finding on the merits, usually because the appeal was not filed in a timely manner or because it did not fall within the Board's jurisdiction.

- The average amount of time it took to process a non-ATC appeal at the Regional Office level was 2.77 months in FY 1980, 3.76 months in FY 1981, 3.60 months in FY 1982, 6.64 months in FY 1983, and 3.75 months in FY 1984. For the five-year period as a whole, the average amount of time required for the Regional Offices to issue a decision was 4.70 months.

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[3]This number does not include the 11,360 ATC appeals decided which also fall within the adverse action category.

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The Board[4]

- Relative to the 893 non-ATC PFR's decided in FY 1980, the number of non-ATC PFR's decided by the Board increased significantly in both FY 1981 and FY 1982 (1,153 and 1,192 PFR's decided in each of those two years, respectively). After a moderate decline in FY 1983 (916 non-ATC PFR's decided), the number of non-ATC PFR's decided rose dramatically to 2,737 in FY 1984.

- The percentage of non-ATC PFR's decided which were granted (reopened) by the Board was 15 percent for FY 1980. After rising to and then remaining at a constant 22 percent for both FY 1981 (252 of 1,153) and FY 1982 (268 of 1,192), the percentage of non-ATC PFR's which the Board decided to grant decreased to 19 percent in FY 1983 (171 of 916) and to 13 percent in FY 1984 (365 of 2,737).

- The percentage of Regional Office decisions overturned **as a proportion of all non-ATC PFR's decided** increased from 3 percent in FY 1980 (27 of 893) to 16 percent in FY 1981 (186 of 1,153) and to 20 percent in FY 1982 (238 of 1,192), before decreasing to 12 percent in FY 1983 (106 of 916) and to 8 percent in FY 1984 (223 of 2,737).

- Considering just the non-ATC PFR's which the Board decided to grant (reopen), the percentage of Regional Office decisions overturned **among this segment of PFR's** increased from 20 percent in FY 1980 (27 of 138) to 74 percent in FY 1981 (186 of 252) and to 89 percent in FY 1982 (238 of 268), before decreasing to 62 percent in FY 1983 (106 of 171) and to 61 percent in FY 1984 (223 of 365).

- Among all non-ATC PFR's filed by employees, the percentage which resulted in the Regional Office decision being overturned increased from 3 percent in FY 1980 (19 of 736) to 12 percent in FY 1981 (114 of 942) and to 17 percent in FY 1982 (171 of 1,019), before decreasing to 10 percent in FY 1983 (80 of 835) and to 5 percent in FY 1984 (106 of 2,330).

- Among all non-ATC PFR's filed by agencies, the percentage which resulted in the Regional Office decision being overturned increased from 5 percent in FY 1980 (8 of 146) to 36 percent in FY 1981 (55 of 154) and to 39 percent in FY 1982 (66 of 168), before decreasing to 33 percent in FY 1983 (26 of 80) and to 29 percent in FY 1984 (109 of 370).

- The average amount of time required to decide a non-ATC PFR decreased from 9.69 months in FY 1980 to 6.85 months in FY 1981. The average time then increased to 10.63 months in FY 1982 and 10.61 months in FY 1983, before decreasing to 8.90 months in FY 1984.

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[4]PFR's covering Air Traffic Controllers are not included among these findings since the Board decided ATC PFR's in FY 1983 and FY 1984 only.

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B. REGIONAL OFFICE FINDINGS

In this section we will present and discuss the five-year trends for the Regional Offices under the following subheadings: **Numbers of Appeals Decided, Numbers of Hearings Held, Impact of Decisions on Agency Actions**, and **Decision Times.** Aggregated statistics and findings for all of the Regional Offices will be presented in this section; specific information relative to each Regional Office can be found in Appendix 3. Appendix 4 lists relevant data for each individual Federal department or agency.

Numbers of Appeals Decided

Exhibit 25 presents the numbers of non-ATC appeals decided by the Regional Offices for fiscal years 1980 through 1984. Overall, they issued 29,274 non-ATC appeals decisions during this time period. By year, the Regional Offices issued decisions on 3,641 appeals in FY 1980; 5,610 in FY 1981; 4,918 in FY 1982; 8,076 in FY 1983; and 7,029 in FY 1984. Exhibit 25 (which also sets forth the numbers and percentages of the various types of non-ATC appeals decided by the Regional Offices) and Figure 7 (which visually compares those proportions) show that adverse actions formed the major component of the Regional Offices' caseloads during the five-year period. Exhibit 26 provides the same information, but further broken down by the subcategories within each type of appeal (e.g., an adverse action may take the form of a removal, suspension, grade or pay reduction, involuntary resignation, or some other type of related action). Reduction-in-force and disability retirement appeals, although far less numerous than adverse action appeals, also contributed significantly both to the combined five-year and individual annual appeal totals.

The numbers of non-ATC appeals from agency actions based solely on performance (under Title 5, Part 432, of the Code of Federal Regulations) were 59 in FY 1980, 13 in FY 1981, and 36 in FY 1982 (see Exhibit 26). These numbers increased significantly both in FY 1983 and in FY 1984, with 207 and 420 performance-based appeals decided in each of those years, respectively. Those increases may be largely attributed to the adoption and implementation of performance plans by the agencies beginning in FY 1983.[5]

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[5]See Note 2, Chapter 2.

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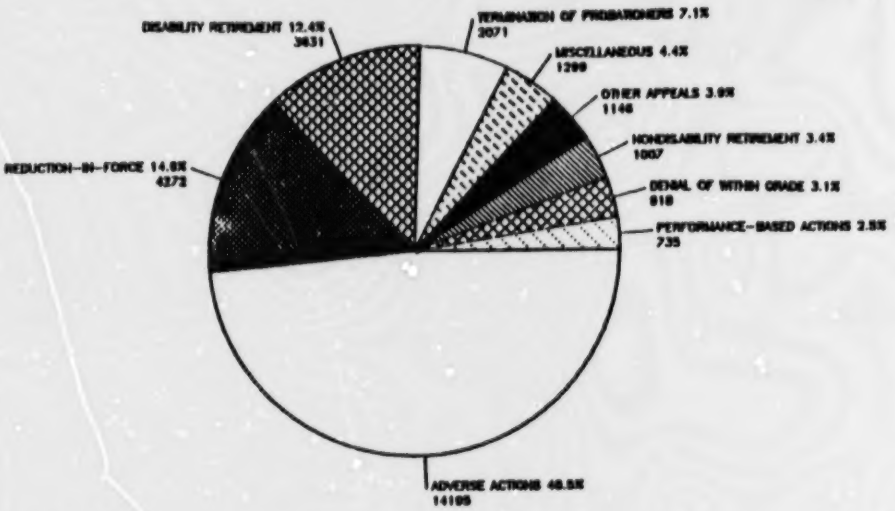
Exhibit 25

NUMBERS OF REGIONAL OFFICE DECISIONS FOR NON-ATC APPEALS,
BY TYPE OF APPEAL: FY 1980 THROUGH FY 1984

Type of Appeal	FY 1980		FY 1981		FY 1982		FY 1983		FY 1984		COMBINED FY 1980 - FY 1984	
	Number Decided	Percent of Total Decided	Number Decided	Percent of Total Decided	Number Decided	Percent of Total Decided	Number Decided	Percent of Total Decided	Number Decided	Percent of Total Decided	Number Decided	Percent of Total Decided
Adverse Action	2,184	60%	2,851	51%	2,198	45%	3,443	43%	3,519	50%	14,195	49%
Disability Retirement	201	6%	967	17%	383	8%	1,346	17%	734	11%	3,631	12%
Reduction-in-Force	451	12%	562	10%	1,176	24%	1,379	17%	704	10%	4,272	15%
Termination of Probationers	321	9%	468	8%	395	8%	526	7%	361	5%	2,071	7%
Denial of Within-Grade (Competence)	216	6%	220	4%	145	3%	181	2%	156	2%	918	3%
Miscellaneous	0	0%	187	3%	305	6%	444	5%	363	5%	1,299	4%
Nondisability Retirement	51	1%	160	3%	126	3%	205	3%	465	7%	1,007	3%
Performance (Part 432)	59	2%	13	0%	36	1%	207	3%	420	6%	735	3%
Other	158	4%	182	3%	154	3%	345	4%	307	4%	1,146	4%
TOTAL	3,641	100%	5,610	100%	4,918	100%	8,076	100%	7,029	100%	29,274	100%

FIGURE 7

TYPES OF APPEALS DECIDED BY MSPB REGIONAL OFFICES
AS A PROPORTION OF TOTAL NON-ATC APPEALS DECIDED DURING
FY 1980 - FY 1984



PERCENTAGES MAY NOT AGREE WITH EXHIBITS BECAUSE OF ROUNDING

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Exhibit 26

NUMBERS OF REGIONAL OFFICE DECISIONS FOR NON-ATC APPEALS, BY SUBCATEGORY OF ACTION WITHIN EACH TYPE OF APPEAL: FY 1980 THROUGH FY 1984

	FY 1980		FY 1981		FY 1982		FY 1983		FY 1984	
Type of Appeal	Number Decided	%	Number Decided	%	Number Decided	%	Number Decided	%	Number Decided	%
Adverse Action	2,184	60%	2,851	51%	2,198	45%	3,443	43%	3,519	50%
Removal	—	—	1,926	34%	1,483	30%	2,555	32%	2,693	38%
Suspension	—	—	283	5%	200	4%	398	5%	214	3%
Grade Reduction	—	—	264	5%	117	2%	178	2%	185	2%
Involuntary Resignation	—	—	59	1%	66	1%	91	1%	126	2%
Pay Reduction	—	—	45	1%	31	1%	19	0%	40	1%
Other	—	—	274	5%	301	6%	202	3	261	4%
Disability Retirement	201	6%	967	17%	383	8%	1,346	17%	734	11%
Reject Employee Application	—	—	937	17%	370	8%	1,297	16%	708	10%
Other	—	—	30	0%	13	0%	49	1%	26	1%
Nondisability Retirement	51	1%	160	3%	126	3%	205	3%	465	7%
Annuity Pay to Survivor	—	—	106	2%	30	1%	40	1%	174	2%
Other	—	—	54	1%	96	2%	165	2%	291	5%
Reduction-in-Force	451	12%	562	10%	1,176	24%	1,279	17%	704	10%
Separation	—	—	254	5%	497	10%	509	6%	238	3%
Reassignment	—	—	166	3%	216	4%	138	2%	75	1%
Grade Reduction	—	—	120	2%	320	7%	604	7%	248	4%
Other	—	—	22	0%	143	3%	167	2%	143	2%
Termination of Probationers	321	9%	468	8%	395	8%	526	7%	361	5%
Separation	—	—	433	8%	375	8%	482	6%	347	5%
Involuntary Resignation	—	—	19	0%	8	0%	9	0%	2	0
Other	—	—	16	0%	12	0%	35	1%	12	0%
Denial of Within-Grade	216	6%	220	4%	145	3%	181	2%	156	2%
Negative Reconsideration	—	—	176	3%	113	2%	151	2%	135	2%
Other	—	—	44	1%	32	1%	30	0%	21	0%
Miscellaneous	0	0%	187	3%	305	6%	444	5%	363	5%
Performance (Part 432)	59	2%	13	0%	36	1%	207	3%	420	6%
Other Appeals	158	4%	182	3%	154	3%	345	4%	307	4%
TOTAL	3,641[1]	100%	5,610	100%	4,918	100%	8,076[2]	100%	7,029	100%

1 Data for actions missing because they were unavailable from the Case Tracking System.

2 These data have been modified to conform with the number of appeals decided presented in the exhibits of the Study of MSPB Appeals Decisions for FY 1983.

Numbers of Hearings Held

The Regional Offices held hearings on 1,394 non-ATC appeals decided in FY 1980; 2,345 in FY 1981; 1,589 in FY 1982; 2,824 in FY 1983; and 3,316 in FY 1984 (see Exhibit 27). Exhibit 27 also shows that of all appeals decided, hearings were held for 38 percent in FY 1980, 42 percent in FY 1981, 32 percent in FY 1982, 35 percent in FY 1983, and 47 percent in FY 1984.

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Exhibit 27

NUMBER OF REGIONAL OFFICE HEARINGS FOR NON-ATC APPEALS
BY TYPE OF APPEAL: FY 1980 THROUGH FY 1984

Type of Appeal	FY 1980			FY 1981			FY 1982			FY 1983			FY 1984		
	Number Decided	Number Hearings	%	Number Decided	Number Hearings	%	Number Decided	Number Hearings	%	Number Decided	Number Hearings	%	Number Decided	Number Hearings	%
Adverse Action	2,184	947	43%	2,851	1,404	49%	2,198	919	38%	3,443	1,603	47%	3,519	1,943	55%
Disability Retirement	201	79	39%	967	501	52%	383	153	38%	1,346	484	36%	734	409	56%
Reduction-in-Force	451	207	46%	562	247	44%	1,176	368	29%	1,379	319	23%	704	287	41%
Termination of Probationers	321	24	7%	468	28	6%	395	19	4%	526	63	12%	361	48	13%
Denial of Within-Grade (Competence)	216	80	37%	220	87	40%	145	52	32%	181	63	35%	156	75	48%
Miscellaneous	0	—	—	187	0	0%	305	2	1%	444	34	8%	363	25	7%
Nondisability Retirement	51	6	12%	160	34	21%	126	27	18%	205	38	19%	465	108	23%
Performance (Part 432)	59	25	41%	13	—	—	36	16	44%	207	133	64%	420	320	76%
Other Appeals	158	26	16%	182	44	23%	154	33	21%	345	87	25%	307	101	33%
OTHER	3,641	1,394	38%	5,610	2,345	42%	4,918	1,589	32%	8,076	2,824	35%	7,029	3,316	47%

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Impact of Decisions on Agency Actions

As shown in Exhibit 28, MSPB Regional Office decisions on appeals left the related agency action effectively unchanged (either by rejecting the appeal or by affirming the agency action)[6] in 81 percent of the non-ATC appeals decided in FY 1980, 74 percent in FY 1981, 88 percent in FY 1982, 86 percent in FY 1983, and 87 percent in FY 1984 (see Exhibit 28). Exhibit 28 also shows the numbers and percentages of non-ATC appeals which were decided on the merits and which reversed or mitigated the agency action. Harmful procedural errors accounted for Regional Office reversals of agency actions in 13 percent (62 of 483) of all non-ATC reversals in FY 1980, 8 percent (72 of 942) in FY 1981, 27 percent (134 of 505) in FY 1982, 8 percent (83 of 1,007) in FY 1983, and 10 percent (82 of 781) in FY 1984.

Exhibit 28

REGIONAL OFFICE DECISIONS FOR NON-ATC APPEALS, BY OUTCOME OF APPEAL: FY 1980 THROUGH FY 1984

	FY 1980		FY 1981		FY 1982		FY 1983		FY 1984	
Outcome	Number	%	Number	%	Number	%	Number	%	Number	%
Appeal rejected without finding on merits	1,438	39%	2,153	38%	2,542	52%	3,924	49%	3,293	47%
Appeal remanded to agency	5	0%	5	0%	0	0%	3	0%	2	0%
Affirmed agency action	1,523	42%	2,029	36%	1,797	36%	3,000	37%	2,835	40%
Mitigated agency action	130	4%	54	1%	37	1%	81	1%	87	1%
Reversed agency action	483	13%	942	17%	505	10%	1,007	12%	781	11%
Harmful procedural error	(62)	(3)	(72)	(2)	(134)	(6)	(83)	(2)	(82)	(2)
On the merits	(260)	(12)	(338)	(11)	(351)	(15)	(913)	(22)	(686)	(19)
Other	(161	(8)	(532)	(18)	(20)	(1)	(11)	(0)	(13)	(0)
Other Decisions	62	2%	417	7%	37	1%	61	1%	31	0%
TOTAL[1]	3,641	100%	5,610	99%	4,918	100%	8,076	100%	7,029	99%

[1] Totals may not equal 100 percent due to rounding.

[6] The Regional Offices affirmed the agency actions in 42 percent of the non-ATC appeals decided in FY 1980, 36 percent of those decided in FY 1981, 36 percent of those decided in FY 1982, 37 percent of those decided in FY 1983, and 40 percent of those decided in FY 1984.

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As Figure 8 illustrates, the Regional Offices reversed or mitigated 29 percent (613 of 2,163) of the non-ATC appeals decided on the merits in FY 1980; 33 percent (996 of 3,040) in FY 1981; 24 percent (542 of 2,376) in FY 1982; 27 percent (1,088 of 4,152) in FY 1983; and 23 percent (868 of 3,703) in FY 1984. Figure 9 includes the appeals from the Air Traffic Controllers and illustrates the dramatic impact the ATC appeals had on the Regional Office caseload.

FIGURE 8
STUDY OF REGIONAL OFFICES DECISION TRENDS
BY OUTCOME OF NON-ATC APPEALS FOR FY 1980 - FY 1984

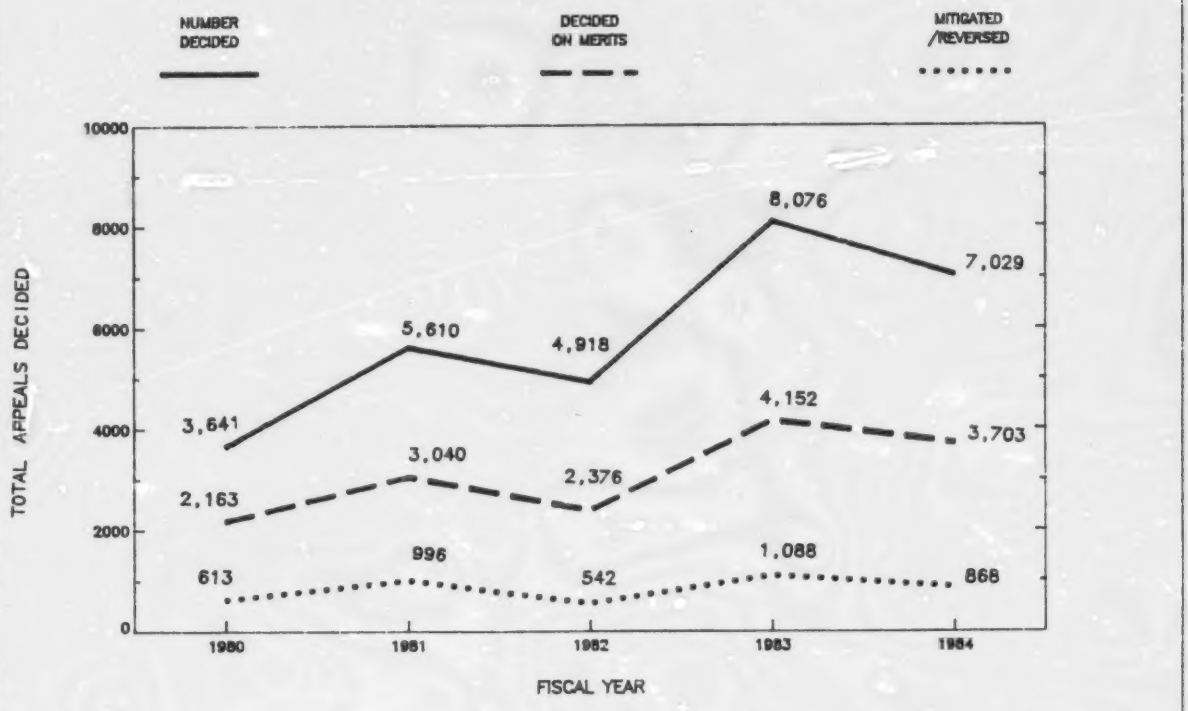

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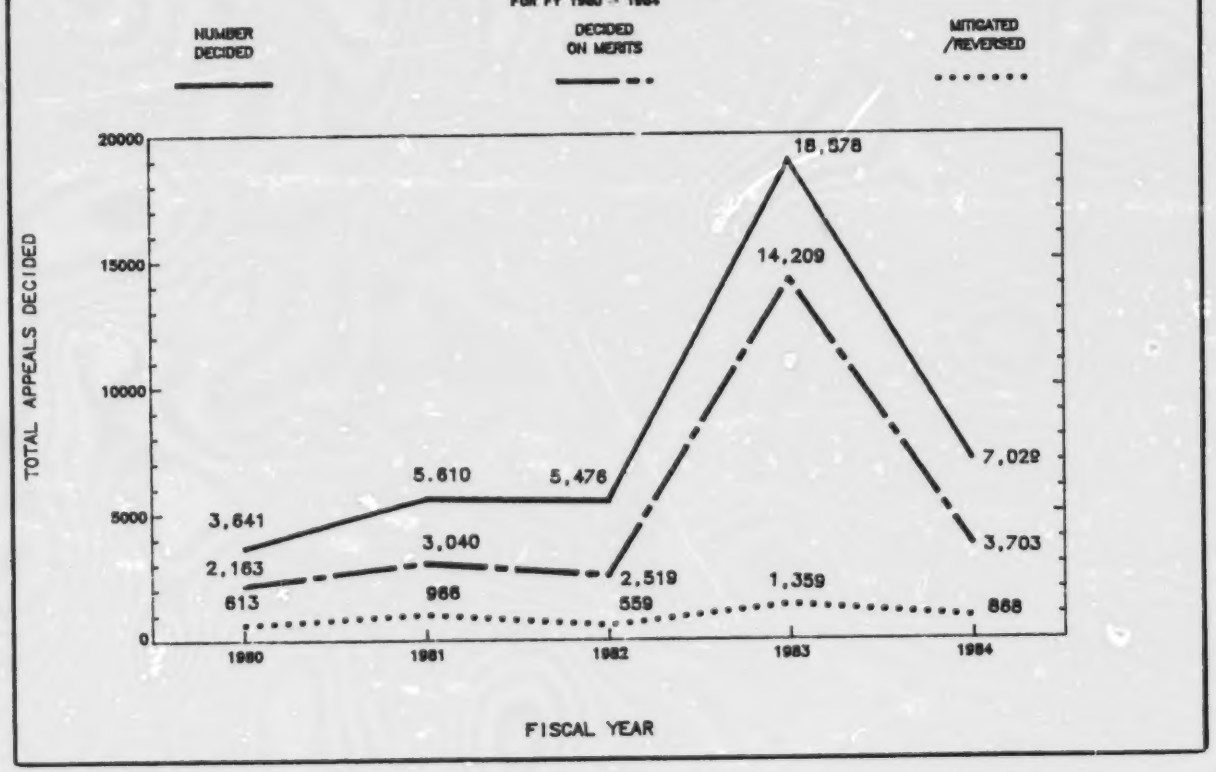
FIGURE 9
STUDY OF REGIONAL OFFICES DECISION TRENDS
BY OUTCOME OF ALL APPEALS (INCLUDING ATC APPEALS)
FOR FY 1980 -- 1984



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Decision Times

The average amount of time required to decide a non-ATC appeal at the Regional Offices was 2.77 months in FY 1980, 3.76 months in FY 1981, 3.60 months in FY 1982, 6.64 months in FY 1983, and 3.75 months in FY 1984 (see Exhibit 29). Exhibit 30 shows that appeals which were rejected (dismissed) were processed more rapidly than appeals which were decided on the merits in each of the five fiscal years.

Exhibit 29

DECISION TIMES AT THE REGIONAL OFFICES FOR NON-ATC APPEALS, IN TIME INTERVALS MEASURED IN MONTHS:[1] FY 1980 THROUGH FY 1984

	FY 1980			FY 1981			FY 1982			FY 1983			FY 1984		
Decision Time (Months)	Number of Appeals	%	Cum. % of Appeals	Number of Appeals	%	Cum. % of Appeals	Number of Appeals	%	Cum. % of Appeals	Number of Appeals	%	Cum. % of Appeals	Number of Appeals	%	Cum. % of Appeals
0- .99	519	14%	14%	106	2%	2%	160	2%	2%	209	3%	3%	380	5%	5%
1-1.99	443	12%	26%	373	7%	9%	554	10%	12%	852	10%	13%	1,301	19%	24%
2-2.99	697	19%	45%	689	12%	21%	887	16%	28%	988	12%	25%	1,428	20%	44%
3-3.99	1,737	48%	93%	3,793	68%	89%	3,170	59%	87%	1,188	15%	40%	2,314	33%	77%
4+	245	7%	100%	612	11%	100%	701	13%	100%	4,831	60%	100%	1,606	23%	100%
TOTAL	3,641	100%		5,582	100%		5,472	100%		8,068	100%		7,029	100%	
Average Decision Time	2.77 months			3.76 months			3.60 months			6.64 months			3.75 months		

1 For the purpose of analysis, 30 days = 1 month.

Exhibit 30

AVERAGE DECISION TIMES AT THE REGIONAL OFFICES, BY OUTCOME OF APPEAL: FY 1980 THROUGH FY 1984

	FY 1980		FY 1981		FY 1982		FY 1983		FY 1984	
Outcome	Number of Appeals	Average Decision Time (Months)[1]	Number of Appeals	Average Decision Time (Months)	Number of Appeals	Average Decision Time (Months)	Number of Appeals	Average Decision Time (Months)	Number of Appeals	Average Decision Time (Months)
Appeal Rejected	1,478	2.68	2,143	3.12	2,542	2.94	3,849	4.67	3,079	2.50
Appeal Reached on the Merits	2,136	2.88	3,027	4.17	2,376	4.07	4,152	8.50	3,703	4.81
Other	27	2.88	440	4.07	—	—	75	4.57	247	2.89
TOTAL	3,641	2.80	5,610	3.76	4,918	3.60	8,076	6.64	7,029	3.75

1 For the purposes of analysis, 30 days = 1 month.

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C. BOARD FINDINGS

In this section we will address the data under the following subheadings: **Number of PFR's Decided, Petitions for Review Granted, Regional Office Decisions Overturned,** and **Decision Times.**

Number of PFR's Decided

Figure 10 visually tracks the annual totals of non-ATC PFR's decided by the Board from FY 1980 through FY 1984. After issuing decisions on 893 non-ATC PFR's in FY 1980, the number of non-ATC PFR's decided by the Board increased and then remained at a relatively constant level for FY 1981 and FY 1982 (1,153 and 1,192 PFR's decided in each of those two years, respectively). After a moderate decline in FY 1983 (916 PFR's decided), the number of PFR's decided rose dramatically to 2,737 in FY 1984. The decline in the number of non-ATC decisions from FY 1982 to FY 1983 can be attributed to the fact that the Board's resources for processing PFR's in FY 1983 were significantly affected by the processing and adjudication of the voluminous Air Traffic Controller PFR's.

FIGURE 10

NON-ATC PETITIONS FOR REVIEW
DECIDED BY THE BOARD: FY 1980 - FY 1984

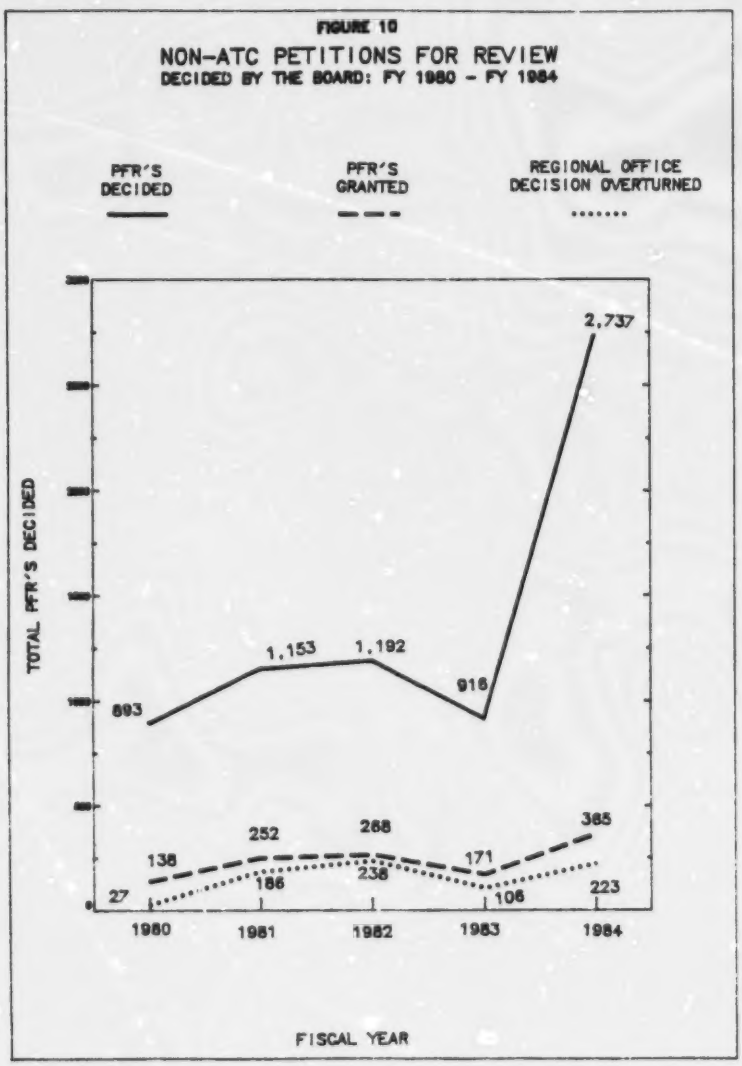

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Exhibit 31 shows the annual totals of non-ATC appeals decided by the Board for FY 1980 through FY 1984 and breaks down the numbers of PFR's decided by type of petitioner. It shows that employees requested the vast majority of PFR's decided in each of those five years.

Exhibit 31

BOARD DECISIONS FOR NON-ATC PETITIONS FOR REVIEW, BY TYPE OF PETITIONER: FY 1980 THROUGH FY 1984

Type of Petitioner	Number of Petitions For Review Decided	Number of Petitions For Review Granted	Percent Granted	Number of PFR's Granted that overturned Regional Office Decisions	Percent of PFR's Decided that overturned Regional Office Decisions	Percent of PFR's Granted that overturned Regional Office Decisions
FY 1980						
Agency	146	42	29%	8	5%	19%
Employee	736	96	13%	19	3%	20%
Other	11	—	—	—	—	—
TOTAL	893	138	15%	27	3%	20%
FY 1981						
Agency	154	76	49%	55	36%	72%
Employee	942	158	17%	114	12%	72%
Other	57	18	32%	17	30%	94%
TOTAL	1,153	252	22%	186	16%	74%
FY 1982						
Agency	168	89	53%	66	39%	74%
Employee	1,019	178	17%	171	17%	96%
Other	5	1	20%	1	20%	100%
TOTAL	1,192	268	22%	238	20%	89%
FY 1983						
Agency	80	58	72%	26	33%	45%
Employee	835	113	14%	80	10%	71%
Other	1	0	0%	0	0%	0%
TOTAL	916	171	19%	106	12%	62%
FY 1984						
Agency	370	171	46%	109	29%	64%
Employee	2,330	181	8%	106	5%	59%
Other	37	13	35%	8	22%	62%
TOTAL	2,737	365	13%	223	8%	61%

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Petitions for Review Granted

The percentage of non-ATC PFR's decided which were granted by the Board was 15 percent for FY 1980, but rose to 22 percent for both FY 1981 (252 of 1,153) and FY 1982 (268 of 1,192) (see Exhibit 31 and Figure 10). That percentage decreased to 19 percent in FY 1983 (171 of 916) and to 13 percent in FY 1984 (365 of 2,737). The more recent decreases in the percentages of PFR's granted reflect the development of Board precedent. The need to grant petitions decreased as the Board decided and interpreted the various provisions of the Civil Service Reform Act and OPM regulations which implemented many of the changes required by the Act.

Regional Office Decisions Overturned[7]

The percentage of Regional Office decisions overturned as a proportion of all non-ATC PFR's **decided** increased from 3 percent in FY 1980 (27 of 893) to 16 percent in FY 1981 (186 of 1,153) and to 20 percent in FY 1982 (238 of 1,192), before decreasing to 12 percent in FY 1983 (106 of 916) and to 8 percent in FY 1984 (223 of 2,737) (see Exhibit 31 and Figure 10). The percentage of Regional Office decisions overturned as a proportion of all non-ATC PFR's **granted** increased from 20 percent in FY 1980 (27 of 138) to 74 percent in FY 1981 (186 of 252) and to 89 percent in FY 1982 (238 of 268), before decreasing to 62 percent in FY 1983 (106 of 171) and to 61 percent in FY 1984 (223 of 365) (see Exhibit 31 and Figure 10).

The percentage of non-ATC PFR's **filed by employees** which resulted in the Regional Office decision being overturned increased from 3 percent in FY 1980 (19 of 736) to 12 percent in FY 1981 (114 of 942) and to 17 percent in FY 1982 (171 of 1,019), before decreasing to 10 percent in FY 1983 (80 of 835) and to 5 percent in FY 1984 (106 of 2,330) (see Exhibit 31). The percentage of non-ATC PFR's **filed by agencies** which resulted in the Regional Office decision being overturned increased from 5 percent in FY 1980 (8 of 146) to 36 percent in FY 1981 (55 of 154) and to 39 percent in FY 1982 (66 of 168), before decreasing to 33 percent in FY 1983 (26 of 80) and to 29 percent in FY 1984 (109 of 370) (see Exhibit 31).

Beginning in FY 1983, most of the trends show decreases in the percentages of Regional Office decisions overturned by the Board. These downward trends can be explained in part by the development over time of precedential Board decisions. The guidance offered by those decisions (along with the expertise acquired by the presiding officials) effectively improved the quality of Regional Office decisions, consequently lowering the rate of initial decisions overturned by the Board.

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[7]For the purposes of this report, a Regional Office decision is considered to have been overturned when the Board grants a PFR (reopens a case) and reverses, remands, mitigates, or vacates the initial decision.

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Decision Times

Exhibit 32 presents the average decision times at the Board for non-ATC Petitions for Review by outcome of the PFR's for fiscal years 1980 through 1984. The average amount of time required to decide a non-ATC PFR decreased from 9.69 months in FY 1980 to 6.85 months in FY 1981. The average time then increased to 10.63 months in FY 1982 and 10.61 months in FY 1983, before decreasing to 8.90 months in FY 1984. The Board processed PFR's which were denied more rapidly than PFR's which were granted in each of the five years.

Exhibit 32

AVERAGE DECISION TIMES AT THE BOARD FOR NON-ATC PETITIONS FOR REVIEW, BY OUTCOME OF PETITION FOR REVIEW: FY 1980 THROUGH FY 1984

	FY 1980	FY 1981	FY 1982	FY 1983	FY 1984
Outcome of Petition for Review	Average Decision Time (months)	Average Decision Time (months)[1]	Average Decision Time (months)	Average Decision Time (months)	Average Decision Time (months)
Petitions Denied	9.46	6.40	9.92	9.66	8.20
Petitions Granted	10.43	8.91	14.06	17.00	14.03
OVERALL AVERAGE	9.69	6.85	10.63	10.61	8.90

[1] For the purpose of analysis, 30 days = 1 month.

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APPENDIX 1

REGIONAL OFFICE DECISIONS FOR ALL NON-ATC APPEALS IN FY 1994 BY REGIONAL OFFICE, TYPE OF APPEAL, AND OUTCOME

REGIONAL OFFICE	ADVERSE ACTION	DISABILITY RETIREMENT	REDUCTION-IN-FORCE	TERMINATION OF PROBATIONERS	DENIAL OF WITHIN-GRADE (COMPETENCE)	MISCELLANEOUS	NONDISABILITY RETIREMENT	OTHER	TOTAL
ATLANTA									
Number Decided	519	121	107	58	18	61	64	123	1,071
Number Reached on the Merits	333	99	60	4	13	0	48	69	626
Number Reversed/ Mitigated	60	55	1	3	4	0	10	19	160
Percent Reversed/ Mitigated	20%	56%	2%	75%	31%	0%	21%	28%	26%
BOSTON									
Number Decided	146	31	25	15	6	6	28	28	285
Number Reached on the Merits	86	27	25	1	4	0	19	20	182
Number Reversed/ Mitigated	26	24	5	0	2	0	4	7	68
Percent Reversed/ Mitigated	30%	89%	20%	0%	50%	0%	21%	35%	37%
CHICAGO									
Number Decided	399	63	40	45	15	56	29	89	736
Number Reached on the Merits	189	51	27	2	9	0	20	53	351
Number Reversed/ Mitigated	32	26	5	1	3	0	2	14	83
Percent Reversed/ Mitigated	17%	51%	19%	50%	33%	0	10%	26%	24%
DALLAS									
Number Decided	304	92	85	51	18	36	45	54	685
Number Reached on the Merits	146	79	58	1	8	1	37	32	362
Number Reversed/ Mitigated	18	49	0	1	0	0	8	8	84
Percent Reversed/ Mitigated	12%	62%	0%	100%	0%	0%	22%	25%	23%
DENVER									
Number Decided	182	28	63	16	7	26	24	35	381
Number Reached on the Merits	85	27	18	1	5	0	15	23	174
Number Reversed/ Mitigated	15	21	4	0	0	0	3	5	48
Percent Reversed/ Mitigated	18%	78%	22%	0%	0%	0%	20%	22%	28%
NEW YORK									
Number Decided	311	36	16	33	7	41	19	48	511
Number Reached on the Merits	138	31	7	0	3	0	14	20	213
Number Reversed/ Mitigated	25	22	1	0	1	0	1	2	52
Percent Reversed/ Mitigated	18%	71%	14%	0%	33%	0%	7%	10%	24%

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APPENDIX 1 (Cont'd)

REGIONAL OFFICE DECISIONS FOR ALL NON-ATC APPEALS IN FY 1984 BY REGIONAL OFFICE, TYPE OF APPEAL, AND OUTCOME

REGIONAL OFFICE	ADVERSE ACTION	DISABILITY RETIREMENT	REDUCTION-IN-FORCE	TERMINATION OF PROBATIONERS	DENIAL OF WITHIN-GRADE COMPETENCE	MISCELLANEOUS	NONDISABILITY RETIREMENT	OTHER	TOTAL
PHILADELPHIA									
Number Decided	360	83	42	37	18	41	34	93	716
Number Reached on the Merits	217	72	17	2	6	0	25	64	403
Number Reversed/ Mitigated	43	34	2	1	1	0	5	14	100
Percent Reversed/ Mitigated	20%	47%	12%	50%	17%	0%	20%	22%	25%
SEATTLE									
Number Decided	134	36	41	17	5	35	8	40	316
Number Reached on the Merits	61	26	19	0	0	1	6	20	133
Number Reversed/ Mitigated	7	18	2	0	0	0	2	3	32
Percent Reversed/ Mitigated	11%	69%	11%	0%	0%	0%	33%	15%	24%
SAN FRANCISCO									
Number Decided	729	133	73	43	16	0	143	85	1,222
Number Reached on the Merits	388	108	40	3	5	0	94	60	698
Number Reversed/ Mitigated	50	52	3	0	1	0	6	12	124
Percent Reversed/ Mitigated	13%	48%	8%	0%	20%	0%	6%	20%	18%
ST. LOUIS									
Number Decided	152	33	50	26	9	18	14	40	342
Number Reached on the Merits	80	24	9	1	6	1	11	26	158
Number Reversed/ Mitigated	19	20	0	0	1	1	3	6	50
Percent Reversed/ Mitigated	24%	83%	0%	0%	17%	100%	27%	23%	32%
WASHINGTON									
Number Decided	255	77	157	20	36	43	56	92	736
Number Reached on the Merits	136	55	88	2	13	0	43	52	389
Number Reversed/ Mitigated	15	32	4	1	3	0	4	4	63
Percent Reversed/ Mitigated	11%	58%	5%	50%	23%	0%	9%	8%	16%
ADMINISTRATIVE LAW JUDGE									
Number Decided	20	1	5	0	1	0	1	0	28
Number Reached on the Merits	10	1	2	0	0	0	1	0	14
Number Reversed/ Mitigated	1	0	2	0	0	0	1	0	4
Percent Reversed/ Mitigated	10%	0%	100%	0%	0%	0%	100%	0%	29%
TOTAL									
Number Decided	3,519	734	704	361	156	363	465	727	7,029
Number Reached on the Merits	1,869	600	370	17	72	3	333	439	3,703

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APPENDIX 2

REGIONAL OFFICE DECISIONS FOR ALL NON-ATC APPEALS
IN FY 1984 BY AGENCY, TYPE OF APPEAL,
AND OUTCOME

AGENCY	ADVERSE ACTION	DISABILITY RETIREMENT	REDUCTION-IN-FORCE	TERMINATION OF PROBATIONERS	DENIAL OF WITHIN GRADE (COMPETENCE)	MISCELLANEOUS	NONDISABILITY RETIREMENT	OTHER	TOTAL
AIR FORCE									
Number Decided	240	0	24	35	7	25	0	46	377
Number Reached on the Merits	156	0	13	1	6	0	0	34	210
Number Reversed/ Mitigated	25	0	3	1	0	0	0	8	37
Percent Reversed/ Mitigated	16%	0%	23%	100%	0%	0%	0%	24%	17%
AGRICULTURE									
Number Decided	78	0	29	17	11	20	0	12	167
Number Reached on the Merits	39	0	20	1	4	1	0	8	73
Number Reversed/ Mitigated	8	0	1	1	2	0	0	2	14
Percent Reversed/ Mitigated	21%	0%	5%	100%	50%	0%	0%	25%	19%
ARMY									
Number Decided	332	0	56	42	30	51	0	96	607
Number Reached on the Merits	193	0	28	2	19	0	0	68	310
Number Reversed/ Mitigated	38	0	4	0	5	0	0	15	62
Percent Reversed/ Mitigated	20%	0%	14%	0%	26%	0%	0%	22%	20%
COMMERCE									
Number Decided	25	0	13	2	3	3	0	5	51
Number Reached on the Merits	13	0	8	0	1	0	0	3	25
Number Reversed/ Mitigated	1	0	2	0	0	0	0	0	3
Percent Reversed/ Mitigated	8%	0%	25%	0%	0%	0%	0%	0%	12%
DOD (Miscellaneous)									
Number Decided	104	0	9	14	11	12	0	23	173
Number Reached on the Merits	64	0	4	0	5	0	0	13	86
Number Reversed/ Mitigated	16	0	0	0	0	0	0	3	19
Percent Reversed/ Mitigated	25%	0%	0%	0%	0%	0%	0%	23%	22%
ENERGY									
Number Decided	10	0	11	0	3	3	0	3	30
Number Reached on the Merits	3	0	10	0	1	0	0	3	17
Number Reversed/ Mitigated	0	0	0	0	0	0	0	1	1
Percent Reversed/ Mitigated	0%	0%	0%	0%	0%	0%	0%	33%	6%
HHS									
Number Decided	70	0	87	8	18	11	0	50	244
Number Reached on the Merits	41	0	61	0	10	0	0	39	151
Number Reversed/ Mitigated	5	0	3	0	1	0	0	5	14
Percent Reversed/ Mitigated	12%	0%	5%	0%	10%	0%	0%	13%	9%
HUD									
Number Decided	30	0	66	2	3	3	0	8	112
Number Reached on the Merits	19	0	39	0	0	0	0	5	63
Number Reversed/ Mitigated	4	0	9	0	0	0	0	2	15
Percent Reversed/ Mitigated	21%	0%	23%	0%	0%	0%	0%	40%	24%

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APPENDIX 2 (Cont'd)

REGIONAL OFFICE DECISIONS FOR ALL MSPB-MTC APPEALS
IN FY 1984 BY AGENCY, TYPE OF APPEAL,
AND OUTCOME

AGENCY	ADVERSE ACTION	DISABILITY RETIREMENT	REDUCTION-IN-FORCE	TERMINATION OF PROBATIONERS	DENIAL OF WITHIN-GRADE (COMPETENCE)	MISCELLANEOUS	REDISABILITY RETIREMENT	OTHER	TOTAL
INTERIOR									
Number Decided	104	0	114	6	10	15	0	11	260
Number Reached on the Merits	48	0	62	1	6	0	0	7	124
Number Reversed/ Mitigated	6	0	1	1	1	0	0	3	12
Percent Reversed/ Mitigated	13%	0%	2%	100%	17%	0%	0%	43%	10%
JUSTICE									
Number Decided	118	0	1	45	3	10	0	17	194
Number Reached on the Merits	75	0	0	2	1	0	0	11	89
Number Reversed/ Mitigated	12	0	0	1	1	0	0	2	16
Percent Reversed/ Mitigated	16%	0%	0%	50%	100%	0%	0%	18%	18%
LABOR									
Number Decided	31	0	24	5	3	12	0	16	91
Number Reached on the Merits	12	0	13	1	0	0	0	13	39
Number Reversed/ Mitigated	2	0	0	0	0	0	0	2	4
Percent Reversed/ Mitigated	17%	0%	0%	0%	0%	0%	0%	15%	10%
NAVY									
Number Decided	329	0	52	60	19	30	0	70	760
Number Reached on the Merits	333	0	24	5	6	0	0	41	409
Number Reversed/ Mitigated	54	0	4	2	1	0	0	5	66
Percent Reversed/ Mitigated	16%	0%	16%	40%	17%	0%	0%	12%	16%
POSTAL SERVICE									
Number Decided	1,124	0	1	1	1	58	0	62	1,247
Number Reached on the Merits	440	0	0	0	0	1	0	10	451
Number Reversed/ Mitigated	75	0	0	0	0	0	0	6	81
Percent Reversed/ Mitigated	17%	0%	0%	0%	0%	0%	0%	55%	18%
TVA									
Number Decided	56	0	61	0	0	9	0	4	130
Number Reached on the Merits	38	0	37	0	0	0	0	0	75
Number Reversed/ Mitigated	9	0	0	0	0	0	0	0	9
Percent Reversed/ Mitigated	24%	0%	0%	0%	0%	0%	0%	0%	12%
TRANSPORTATION									
Number Decided	78	0	22	25	3	16	0	21	165
Number Reached on the Merits	47	0	15	2	3	0	0	9	76
Number Reversed/ Mitigated	6	0	0	1	1	0	0	1	9
Percent Reversed/ Mitigated	13%	0%	0%	50%	33%	0%	0%	11%	12%
TREASURY									
Number Decided	144	0	3	29	7	9	0	36	228
Number Reached on the Merits	104	0	1	0	5	0	0	22	132
Number Reversed/ Mitigated	18	0	0	0	2	0	0	3	23
Percent Reversed/ Mitigated	17%	0%	0%	0%	40%	0%	0%	14%	17%

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APPENDIX 2 (Cont'd)

REGIONAL OFFICE DECISIONS FOR ALL MSPB-ATC APPEALS IN FY 1984 BY AGENCY, TYPE OF APPEAL, AND OUTCOME

AGENCY	ADVERSE ACTION	DISABILITY RETIREMENT	REDUCTION-IN-FORCE	TERMINATION OF PROBATIONERS	DENIAL OF WITHIN-GRADE (COMPETENCE)	MISCELLANEOUS	REDISABILITY RETIREMENT	OTHER	TOTAL
VETERANS ADMINISTRATION									
Number Decided	272	0	17	60	11	31	0	47	438
Number Reached on the Merits	163	0	11	1	1	1	0	33	210
Number Reversed/ Mitigated	30	0	1	0	1	1	0	7	40
Percent Reversed/ Mitigated	18%	0%	9%	0%	100%	100%	0%	21%	19%
OPM									
Number Decided	9	734	1	0	0	6	465	149	1,364
Number Reached on the Merits	4	600	1	0	0	0	333	85	1,023
Number Reversed/ Mitigated	1	353	0	0	0	0	49	21	424
Percent Reversed/ Mitigated	25%	59%	0%	0%	0%	0%	15%	24%	41%
OTHER									
Number Decided	148	0	109	7	10	31	0	42	347
Number Reached on the Merits	68	0	21	0	3	0	0	28	120
Number Reversed/ Mitigated	6	0	1	0	0	0	0	8	15
Percent Reversed/ Mitigated	9%	0%	5%	0%	0%	0%	0%	29%	13%
UNAVAILABLE									
Number Decided	17	0	4	3	3	8	0	9	44
Number Reached on the Merits	9	0	2	1	1	0	0	7	20
Number Reversed/ Mitigated	3	0	0	0	1	0	0	0	4
Percent Reversed/ Mitigated	33%	0%	0%	0%	100%	0%	0%	0%	20%
TOTAL									
Number Decided	3,519	734	704	361	156	363	465	727	7,029
Number Reached on the Merits	1,869	600	370	17	72	3	333	439	3,703
Number Reversed/ Mitigated	319	353	29	7	16	1	49	94	868
Percent Reversed/ Mitigated	17%	59%	8%	41%	22%	33%	15%	21%	23%

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APPENDIX 3

REGIONAL OFFICE DECISIONS FOR *NIL* NON-ATC APPEALS,
BY REGIONAL OFFICE AND OUTCOME:
FY 1980 THROUGH FY 1984

	FY 1980		FY 1981		FY 1982		FY 1983		FY 1984		FIVE-YEAR	
REGIONAL OFFICE	NUMBER DECIDED	%	NUMBER DECIDED	%	NUMBER DECIDED	%	NUMBER DECIDED	%	NUMBER DECIDED	%	TOTAL	%
ATLANTA												
Total Appeals Decided	565	15%	937	17%	850	17%	1,215	15%	1,071	15%	4,638	16%
Appeals Decided on the Merits	362	17%	525	17%	402	17%	616	15%	626	17%	2,531	16%
Reversals/ Mitigations	118	19%	181	18%	87	16%	124	11%	160	18%	670	16%
BOSTON												
Total Appeals Decided	152	4%	188	3%	171	3%	292	4%	285	4%	1,088	4%
Appeals Decided on the Merits	97	4%	110	4%	72	3%	174	4%	182	5%	635	4%
Reversals/ Mitigations	31	5%	52	5%	22	4%	69	6%	68	9%	242	6%
CHICAGO												
Total Appeals Decided	352	10%	476	8%	584	12%	791	10%	736	10%	2,949	10%
Appeals Decided on the Merits	227	10%	267	9%	273	12%	409	10%	351	9%	1,527	10%
Reversals/ Mitigations	60	10%	74	7%	48	9%	118	11%	83	10%	383	9%
DALLAS												
Total Appeals Decided	550	15%	609	12%	511	10%	823	10%	685	10%	3,258	11%
Appeals Decided on the Merits	257	12%	420	14%	270	11%	434	10%	362	10%	1,743	11%
Reversals/ Mitigations	90	15%	133	13%	67	12%	107	10%	84	10%	481	12%
DENVER												
Total Appeals Decided	100	3%	232	4%	237	5%	299	4%	381	5%	1,249	4%
Appeals Decided on the Merits	50	2%	121	4%	120	5%	162	4%	174	5%	627	4%
Reversals/ Mitigations	12	2%	45	5%	21	4%	37	4%	48	6%	163	4%
NEW YORK												
Total Appeals Decided	348	10%	405	7%	356	7%	737	9%	511	7%	2,357	8%
Appeals Decided on the Merits	212	10%	240	8%	152	6%	304	7%	213	6%	1,121	7%
Reversals/ Mitigations	69	11%	71	7%	37	7%	97	9%	52	6%	326	8%
PHILADELPHIA												
Total Appeals Decided	364	10%	686	12%	597	12%	768	10%	716	10%	3,131	11%
Appeals Decided on the Merits	187	9%	322	11%	312	13%	400	10%	403	11%	1,624	11%
Reversals/ Mitigations	46	8%	116	12%	101	19%	94	9%	100	12%	457	11%

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APPENDIX 3 (Cont'd)

REGIONAL OFFICE DECISIONS FOR ALL NON-ATC APPEALS,
BY REGIONAL OFFICE AND OUTCOME:
FY 1980 THROUGH FY 1984

	FY 1980		FY 1981		FY 1982		FY 1983		FY 1984		FIVE-YEAR	
REGIONAL OFFICE	NUMBER DECIDED	%	NUMBER DECIDED	%	NUMBER DECIDED	%	NUMBER DECIDED	%	NUMBER DECIDED	%	TOTAL	%
SEATTLE												
Total Appeals Decided	134	4%	234	4%	97	2%	341	4%	316	4%	1,122	4%
Appeals Decided on the Merits	86	4%	117	4%	38	2%	119	3%	133	4%	493	3%
Reversals/ Mitigations	29	5%	60	6%	19	4%	29	3%	32	4%	169	4%
SAN FRANCISCO												
Total Appeals Decided	413	11%	851	15%	445	9%	1,246	15%	1 ?..	17%	4,177	14%
Appeals Decided on the Merits	270	12%	399	13%	152	6%	668	2%	698	19%	2,187	14%
Reversals/ Mitigations	53	9%	121	12%	28	5%	275	25%	124	14%	601	15%
ST LOUIS												
Total Appeals Decided	124	3%	186	3%	206	4%	357	4%	342	5%	1,215	4%
Appeals Decided on the Merits	80	4%	104	3%	112	5%	185	4%	158	4%	639	4%
Reversals/ Mitigations	24	4%	49	5%	45	8%	56	5%	50	6%	224	5%
WASHINGTON												
Total Appeals Decided	539	15%	726	13%	854	17%	1,207	15%	736	10%	4,062	14%
Appeals Decided on the Merits	335	15%	415	14%	463	20%	681	16%	389	10%	2,283	15%
Reversals/ Mitigations	81	14%	94	9%	67	12%	82	8%	63	7%	387	9%
LAW JUDGES												
Total Appeals Decided	--	—	—	—	—	—	—	—	28	0%	28	0%
Appeals Decided on the Merits	—	—	—	—	—	—	—	—	14	0%	14	0%
Reversals/ Mitigations	—	—	—	—	—	—	—	—	4	0%	4	0%
TOTAL REGIONS												
Total Appeals Decided	3,641	100%	5,610	100%	4,918	100%	8,076	100%	7,029	100%	29,274	100%
Appeals Decided on the Merits	2,163	100%	3,040	100%	2,376	100%	4,152	100%	3,703	100%	15,434	100%
Reversals/ Mitigations	613	100%	996	100%	542	100%	1,088	100%	868	100%	4,107	100%

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APPENDIX 4

REGIONAL OFFICE DECISIONS FOR ALL NON-ATC APPEALS, BY AGENCY AND OUTCOME: FY 1980 THROUGH FY 1984

AGENCY	FY 1980 NUMBER DECIDED	FY 1980 %	FY 1981 NUMBER DECIDED	FY 1981 %	FY 1982 NUMBER DECIDED	FY 1982 %	FY 1983 NUMBER DECIDED	FY 1983 %	FY 1984 NUMBER DECIDED	FY 1984 %	FIVE-YEAR TOTAL	FIVE-YEAR %
AIR FORCE												
Total Appeals Decided	300	8%	367	7%	221	4%	470	6%	383	5%	1,741	6%
Appeals Decided on the Merits	172	8%	234	8%	98	4%	256	6%	216	6%	976	6%
Reversals/ Mitigations	42	7%	71	7%	23	4%	44	4%	42	5%	222	5%
AGRICULTURE												
Total Appeals Decided	130	4%	165	3%	169	3%	274	3%	170	2%	908	3%
Appeals Decided on the Merits	83	4%	71	2%	93	4%	131	3%	75	2%	453	3%
Reversals/ Mitigations	24	4%	21	2%	6	1%	27	2%	15	2%	93	2%
ARMY												
Total Appeals Decided	403	11%	524	9%	354	7%	724	10%	617	9%	2,622	9%
Appeals Decided on the Merits	240	11%	278	9%	149	6%	347	8%	319	9%	1,333	9%
Reversals/ Mitigations	62	10%	80	8%	35	6%	84	8%	68	9%	329	8%
COMMERCE												
Total Appeals Decided	44	1%	47	1%	117	2%	245	3%	53	1%	506	2%
Appeals Decided on the Merits	22	1%	14	1%	60	3%	178	4%	27	1%	301	2%
Reversals/ Mitigations	3	0%	5	1%	7	1%	5	0%	5	1%	25	1%
DOD (Miscellaneous)												
Total Appeals Decided	89	2%	106	2%	96	2%	173	2%	174	2%	638	2%
Appeals Decided on the Merits	52	2%	41	1%	42	2%	89	2%	87	2%	311	2%
Reversals/ Mitigations	25	4%	15	2%	12	2%	14	1%	20	2%	86	2%
ENERGY												
Total Appeals Decided	—	—	—	—	154	3%	64	1%	30	0%	248	1%
Appeals Decided on the Merits	—	—	—	—	109	5%	34	1%	17	0%	160	1%
Reversals/ Mitigations	—	—	—	—	8	1%	5	0%	1	0%	14	0%
HHS												
Total Appeals Decided	168	5%	227	4%	243	5%	210	3%	247	4%	1,095	4%
Appeals Decided on the Merits	110	5%	131	4%	125	5%	111	3%	153	4%	630	4%
Reversals/ Mitigations	28	5%	33	3%	23	4%	17	2%	16	2%	117	3%
HUD												
Total Appeals Decided	—	—	65	1%	29	1%	126	2%	112	2%	332	1%
Appeals Decided on the Merits	—	—	24	1%	12	1%	80	2%	63	2%	179	1%
Reversals/ Mitigations	—	—	4	0%	2	0%	6	1%	15	2%	27	1%
INTERIOR												
Total Appeals Decided	93	3%	200	4%	165	3%	399	5%	261	4%	1,118	4%
Appeals Decided on the Merits	68	3%	123	4%	90	4%	250	6%	125	3%	656	4%
Reversals/ Mitigations	21	3%	23	2%	6	1%	170	16%	12	1%	232	6%

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APPENDIX 4 (Cont'd)

REGIONAL OFFICE DECISIONS FOR ALL NON-ATC APPEALS, BY AGENCY AND OUTCOME: FY 1980 THROUGH FY 1984

	FY 1980		FY 1981		FY 1982		FY 1983		FY 1984		FIVE-YEAR	
AGENCY	NUMBER DECIDED	%	NUMBER DECIDED	%	NUMBER DECIDED	%	NUMBER DECIDED	%	NUMBER DECIDED	%	TOTAL	%
JUSTICE												
Total Appeals Decided	136	4%	155	3%	126	3%	185	2%	196	3%	798	3%
Appeals Decided on the Merits	82	4%	75	2%	60	3%	66	2%	91	2%	374	2%
Reversals/ Mitigations	31	5%	33	3%	11	2%	19	2%	17	2%	111	3%
LABOR												
Total Appeals Decided	36	1%	58	1%	112	2%	73	1%	92	1%	371	1%
Appeals Decided on the Merits	20	1%	21	1%	84	4%	35	1%	40	1%	200	1%
Reversals/ Mitigations	3	0%	3	0%	45	8%	3	0%	4	0%	58	1%
NAVY												
Total Appeals Decided	389	11%	559	10%	402	8%	657	8%	762	11%	2,769	9%
Appeals Decided on the Merits	244	11%	252	8%	156	4%	283	7%	411	11%	1,346	9%
Reversals/ Mitigations	60	10%	84	8%	28	5%	49	5%	67	8%	288	7%
POST OFFICE												
Total Appeals Decided	560	15%	930	17%	818	17%	1,230	15%	1,265	18%	4,803	16%
Appeals Decided on the Merits	365	17%	473	16%	307	13%	474	11%	464	13%	2,083	13%
Reversals/ Mitigations	122	20%	178	18%	89	16%	119	11%	89	10%	597	15%
TVA												
Total Appeals Decided	44	1%	121	2%	139	3%	154	2%	130	2%	588	2%
Appeals Decided on the Merits	32	1%	74	2%	75	3%	88	2%	75	2%	344	2%
Reversals/ Mitigations	7	1%	22	2%	17	3%	12	1%	9	1%	67	2%
TRANSPORTATION												
Total Appeals Decided	134	4%	172	3%	196	4%	208	3%	170	2%	880	3%
Appeals Decided on the Merits	57	3%	90	3%	91	4%	90	2%	81	2%	409	3%
Reversals/ Mitigations	14	2%	24	2%	9	2%	18	2%	12	1%	77	2%
TREASURY												
Total Appeals Decided	228	6%	287	5%	175	4%	218	3%	233	3%	1,141	4%
Appeals Decided on the Merits	122	6%	151	5%	75	3%	99	2%	137	4%	584	4%
Reversals/ Mitigations	23	4%	39	4%	19	4%	18	2%	25	3%	131	3%
VETERANS ADMINISTRATION												
Total Appeals Decided	315	9%	457	8%	296	6%	524	6%	450	6%	2,042	7%
Appeals Decided on the Merits	169	8%	229	8%	104	4%	228	5%	222	6%	952	6%
Reversals/ Mitigations	43	7%	82	8%	28	5%	54	3%	47	5%	254	3%

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APPENDIX 4 (Cont'd)

REGIONAL OFFICE DECISIONS FOR ALL NON-ATC APPEALS,
BY AGENCY AND OUTCOME: FY 1980 THROUGH FY 1984

	FY 1980		FY 1981		FY 1982		FY 1983		FY 1984		FIVE YEAR	
AGENCY	NUMBER DECIDED	%	NUMBER DECIDED	%	NUMBER DECIDED	%	NUMBER DECIDED	%	NUMBER DECIDED	%	TOTAL	%
OTHER												
Total Appeals Decided	343	9%	446	8%	599	8%	1,515	19%	1,624	23%	4,527	15%
Appeals Decided on the Merits	203	9%	215	7%	327	12%	949	23%	1,068	29%	2,762	18%
Reversals/ Mitigations	67	11%	55	5%	99	18%	353	32%	393	45%	967	24%
UNAVAILABLE												
Total Appeals Decided	229	6%	724	13%	507	10%	627	8%	60	1%	2,147	7%
Appeals Decided on the Merits	122	6%	544	18%	319	13%	364	9%	32	1%	1,381	9%
Reversals/ Mitigations	38	6%	224	22%	75	14%	71	7%	11	1%	419	10%
TOTAL												
Total Appeals Decided	3,641	100%	5,610	100%	4,918	100%	8,076	100%	7,029	100%	29,274	100%
Appeals Decided on the Merits	2,163	100%	3,040	100%	2,376	100%	4,152	100%	3,703	100%	15,434	100%
Reversals/ Mitigations	613	100%	996	100%	542	100%	1,088	100%	868	100%	4,107	100%

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APPENDIX 5

MSPB REGIONAL OFFICES AND GEOGRAPHIC JURISDICTIONS DURING FY 1984[1]

Location	Geographic Jurisdiction
ATLANTA REGIONAL OFFICE 1776 Peachtree Steet, N.E. 3rd Fl., North Wing Atlanta, Georgia 30309 404/881-3631	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee
BOSTON REGIONAL OFFICE 150 Causeway Street, Room 1122 Boston, Massachusetts 02114 617/223-2556	Connecticut, Maine, Vermont, Massachusetts, New Hampshire, and Rhode Island
CHICAGO REGIONAL OFFICE 31st Floor 230 South Dearborn St. Chicago, Illinois 60604 312/353-2923	Illinois, Indiana, Michigan, Minnesota, Wisconsin, and Ohio
DALLAS REGIONAL OFFICE 1100 Commerce St., Rm. 6F20 Dallas, Texas 75242 214/767-0555	Arkansas, Louisiana, Oklahoma, Texas, and New Mexico
DENVER REGIONAL OFFICE 730 Simms St., Rm. 301 Golden, Colorado 80401 303/236-2710	Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming
NEW YORK REGIONAL OFFICE New Federal Bldg. 26 Federal Plaza, Rm. 2341 New York, New York 10278 212/264-9372	New Jersey, New York, Puerto Rico, and the Virgin Islands
PHILADELPHIA REGIONAL OFFICE U.S. Customhouse, Rm. 501 Second and Chestnut Streets Philadelphia, Pennsylvania 19106 215/597-9960	Camden County (New Jersey), Delaware, Maryland, Virginia, Pennsylvania, and West Virginia
ST. LOUIS REGIONAL OFFICE 1520 Market St., Rm. 1740 St. Louis, Missouri 63103 314/425-4295.	Iowa, Kansas, Missouri, Nebraska, and St. Clair and Madison Counties in Illinois
SAN FRANCISCO REGIONAL OFFICE 525 Market St., Rm. 2800 San Francisco, California 94105 415/974-9703	California, Arizona, Hawaii, Nevada, and the Pacific Ocean Area
SEATTLE REGIONAL OFFICE Federal Building, Rm. 1840 915 Second Avenue Seattle, Washington 98174 206/442-0394	Alaska, Idaho, Oregon, and Washington
WASHINGTON, D.C. REGIONAL OFFICE 5203 Leesburg Pike, Suite 1109 Falls Church, Virginia 22041 703/756-6250	Washington, D.C. Metropolitan Area, all overseas areas not otherwise covered

[1]This listing accurately reflects the jurisdictional alignment in effect in FY 1984. The jurisdictions of a number of the Regional Offices have since been changed.

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APPENDIX 6

SCOPE OF MSPB APPELLATE JURISDICTION[1]

Appellate jurisdiction concerns those specified cases where actions within an agency have been taken. These include:

- Employment practices administered or ordered by the Office of Personnel Management (OPM);
- Priority consideration for restoration of excepted service employees to duty following recovery or partial recovery from a compensable injury;
- Under certain conditions, termination of probationers and assignment of probationary managers and supervisors to nonmanagerialor nonsupervisory positions;
- Conversions to the Senior Executive Service (SES);
- Denial of reemployment rights;
- Reductions-in-force;
- Denial of reemployment or reinstatement rights;
  -Executive agency transfer
  -International organization transfer
  -Foreign Assistance Act transfer
  -After service in the Economic Stabilization Program
  -After service under the Indian Self-Determination Act in Tribal Organizations
- Restoration rights after military service or recovery from injury or disability;
- Removal or reduction in grade for unacceptable performance;
- Denial of within grade salary increase;
- Suitability disqualifications;
- Adverse actions;
- Adverse actions in the SES;
- Legal retirement determinations;
- Disability retirement determinations;
- Recovery of annuity overpayment;
- Reductions-in-force of SES members;
- Separations due to medical disqualification or involuntary retirement of air traffic controllers;
- Actions otherwise appealable to the Board involving an allegation of discrimination.

NOTE: Where there is a collective bargaining agreement, appellant jurisdiction will be affected; appellants can be referred to their agreements and related materials for specific guidance.

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[1]This listing is provided as informative background only and should not be taken as an authoritative statement for legal purposes. A more detailed exposition is found in Title 5, United States Code, and Title 5, United States Code of Federal Regulations, or in the Board's pamphlet titled "Appeal Rights and Procedures."

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APPENDIX 7

GLOSSARY

Types of Cases

Adverse Action - A removal, suspension for more than 14 days, furlough without pay for 30 days or less, or reduction in grade or pay.

Denial of Within-Grade (Competence) - Denial of a within-grade pay increase based on an agency determination that an employee is not performing at an acceptable level beyond that needed for retention at the present grade and step.

Disability Retirement - An annuity paid to an employee who is under the retirement system, who has completed 5 years of civilian service, and who has become disabled for useful and efficient service because of disease or injury not the result of the employee's "vicious habits, intemperance, or willful misconduct."

Miscellaneous - Cases not fitting any other case category, for which jurisdiction must be decided.

Other - Cases dealing with a wide variety of issues which are legitimately under the Board's jurisdiction but occur so infrequently that they do not warrant separate statistical analysis.

Performance - Reduction in grade or removal of an employee based solely on unacceptable performance. This is distinguished from a competence case which deals with the denial of a within-grade pay increase.

Reduction-in-Force - A personnel action that may be required due to a lack of work or funds, changes resulting from reorganization, reclassification due to a change in duties, or the need to make room for an employee with reemployment or restoration rights. Involves separating an employee from his or her present position, but does not necessarily result in separation or downgrading.

Nondisability Retirement - Claim to entitlement of an annuity under the Civil Service Retirement System.

Unavailable - Those appeals which the Case Tracking System did not assign to specific agencies because of insufficient data entries.

Additional Terms as Used in this Report

Adjudicate - To settle judicially.

Affirmed - A closing action whereby the Regional Office decided an agency personnel action is found to be correct, or the Board decided a Regional Office decision is correct.

Decided on the Merits - Cases which the Regional Offices determined met the Board's jurisdictional and timeliness requirements and which were affirmed, mitigated, remanded, or reversed. For the purposes of this report, rejected cases are not included in this category.

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Denied - A decision by the Board not to reopen a case.

Employee - Although the vast majority of appeals and PFR's are filed by current employees, the word "employee" as used in this report includes some appeals that are filed by applicants for employment (suitability cases), former employees (retirement cases), and, sometimes, relatives of employees (usually legal retirement cases).

Granted - A decision by the Board to reopen a case.

Harmful Procedural Error - Harmful procedural error occurs when an agency fails to apply approved procedures which could have brought about a different decision than the one reached by the agency.

Mitigated - Cases in which the severity of the penalty of an agency's personnel action was reduced.

Overturned - At the Board level, a Regional Office decision is overturned when the Board grants a Petition for Review and subsequently reverses, remands, mitigates, or vacates the Regional Office Decision.

Petition for Review (PFR) - A request for Board reconsideration of a Regional Office decision.

Presiding Official - A lawyer employed by the MSPB who adjudicates cases.

Prevail - At the Board level, an employee is said to prevail when any of the following possible results occur: the Board decided not to grant a Petition for Review filed by an agency, thereby letting a pro-employee Regional Office decision stand; regarding a PFR filed by an agency and granted by the Board, the Board nevertheless decided not to overturn the decision of the Regional Office; or, regarding a PFR filed by an employee and granted by the Board, the Board decided to overturn the Regional Office decision. At the Board level, an agency is said to prevail when any of the following results occur: the Board decided not to grant a PFR filed by an employee, thereby letting a Regional Office decision in favor of the agency stand; regarding a PFR filed by an employee and granted by the Board, the Board nevertheless decided not to overturn the Regional Office decision; or, regarding a PFR filed by an agency and granted by the Board, the Board decided to overturn the Regional Office decision.

Rejected - Cases which the Regional Offices determined did not meet the Board's jurisdictional, timeliness, or other requirements.

Remanded - Cases which the Regional Offices returned to an agency for further processing, or which the Board returned to a Regional Office for further processing.

Reversed - A closing action whereby the Regional Office decided an agency personnel action was incorrect, or the Board decided a Regional Office decision was incorrect.

Vacated - A closing action by the Board which nullifies a Regional Office decision.

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APPENDIX 8

OFFICE OF MERIT SYSTEMS REVIEW AND STUDIES

BIBLIOGRAPHY OF REPORTS

Under the mandate of the Civil Service Reform Act of 1978, the Merit Systems Protection Board (MSPB) shall:

> conduct . . . special studies relating to the civil service and to other merit systems in the executive branch, and report to the President and to the Congress as to whether the public interest in a civil service free of prohibited personnel practices is being adequately protected.
>
> (5 U.S.C. 1205(a)(3))

The Office of Merit Systems Review and Studies (MSRS) of the MSPB is responsible for determining whether the merit principles established by law (5 U.S.C. 2301) are being effectively implemented, and whether prohibited personnel practices (5 U.S.C. 2302) are being avoided in Federal agencies. MSRS studies the rules, regulations, and significant actions of the Office of Personnel Management (OPM) and evaluates the health of the Federal civil service system through a variety of techniques. Among these are surveys, agency specific case studies, onsite interviews, roundtable discussions, and traditional investigative techniques. Research topics are selected to produce studies that are bias-free, definitive and reliable indicators of civil service problems, and which identify ways in which these problems can be addressed. A bibliography of all published MSRS reports in chronological order is given below.

Sexual Harassment in the Federal Workplace: Is it a Problem?, March 1981.

In response to a Congressional request, the Board explored the nature and extent of sexual harassment in Federal Government. Survey data for this study were based on the responses of over 20,000 men and women in the Federal work force. This report covers the following topics: the view of Federal workers toward sexual harassment, the extent of sexual harassment in the Federal Government, the characteristics of the victims and the perpetrators, incidents of sexual harassment, its impact and costs, and possible remedies and their effectiveness.

Do Federal Employees Face Reprisal for Reporting Fraud, Waste, or Mismenagement? Preliminary Report, April 1981.

This is the preliminary report on "whistleblowing" and the Federal employee. Survey data for this study were gathered from 8,600 Federal employees in all grade levels from 15 agencies. This study reports on a number of issues including: the number of observations of illegal or wasteful activities that go unreported and the outcome when they are reported.

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Study of MSPB Appeals Decisions for FY 1980, May 1981.

One of the principal functions of the Merit Systems Protection Board is to hear the appeals of Federal employees from one or another of various types of personnel actions taken or denied by Government agencies. This is the first annual report on MSPB appeals decisions. This report analyzes the Board's processing of the appeals during FY 1980 and places the results in historical context.

Status Report on Performance Appraisal and Merit Pay Among Mid-level Employees, June 1981.

This study focused on the experiences of midlevel employees in the first eight agencies that implemented Merit Pay in October 1980. The data were drawn from a survey of approximately 3,000 employees in grades GS/13-15. The study examines employee perceptions of their performance standards and the performance appraisal system, especially as it relates to improved performance, and their opinions on the fairness of the Merit Pay System.

Report on the Significant Actions of the Office of Personnel Management During 1980, June 1981.

The Civil Service Reform Act of 1978 mandated that the Merit Systems Protection Board monitor the significant actions of the Office of Personnel Management and report to the President and the Congress on the rectitude of those actions. This was the first such report on OPM and data were derived from a survey of more than 1,200 senior personnel officials and interviews with Directors of Personnel of all cabinet and military departments. Issues covered included a discussion of: what OPM did to promote the merit principles and prevent the commission of prohibited personnel practices, OPM's delegated and decentralized authority, and safeguards and programs set up for the Senior Executive Service.

A Report on the Senior Executive Service, September 1981.

This study was undertaken to determine whether the Senior Executive Service is providing the flexibility needed by management to recruit and retain the qualified executives needed to manage Federal agencies more effectively. Data for this report were derived from survey responses from approximately 1,000 senior executives and an indepth phone survey of 100 additional SES'ers. The report covers many topics including: the impact of the bonus restrictions, the ceiling on executive pay, and politicization of the SES.

Whistleblowing and the Federal Employee: Blowing the Whistle on Fraud, Waste and Mismanagement - Who Does It and What Happens, October 1981.

This is the final report on "whistleblowing" and the reprisals that are sometimes taken against those who report an incidence of fraud, waste, or abuse. Survey data were gathered from approximately 8,600 Federal employees in 15 agencies. The report covers a wide range of issues including: the number of employees who observed one or more instances of illegal activities, reasons given for not reporting these activities, and what happens to employees who do report illegal or wasteful activities.

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Breaking Trust: Prohibited Personnel Practices in the Federal Service, Director's Monograph, February 1982.

This monograph reports on prohibited personnel practices as experienced by several key groups of Federal employees. The survey data were drawn from a random selection of 1,000 senior executives, 3,000 midlevel employees, 1,200 senior personnel officials, as well as 8,600 employees in all grade levels. Among other things, the report describes: the Governmentwide incidences of prohibited personnel practices and the incidences of such practices in individual agencies.

The Other Side of the Merit Coin: Removals for Incompetence in the Federal Service, Director's Monograph, February 1982.

This monograph explores the question of whether Federal employees who cannot or will not improve their inadequate performance are being separated from their positions. Data for this report were drawn from the following: OPM's Central Personnel Data File, and MSPB's questionnaire surveys of 1,000 senior executives, 1,200 senior personnel officials, and 3,000 midlevel employees. The report discussed employees' expectations of removals based on poor performance and noted that the expectation of removal varies among Governmentwide populations.

The Elusive Bottom Line: Productivity in the Federal Workforce, Director's Monograph, May 1982.

This monograph examines how well the merit system principle calling for an efficient and effective work force is being realized. Survey data were gathered from randomly selected Federal employees, including 1,000 senior executives and 3,000 midlevel employees. This study reports on employees' perceptions of their overall productivity, whether the amount of work could be increased, and whether the quality of their work could be improved.

Study of MSPB Appeals Decisions for FY 1981, December 1982.

This is the second annual report on MSPB appeals decisions. This report analyzes the Board's decisions on the appeals during FY 1981 and places the results in historical context.

Report on the Significant Actions of the Office of Personnel Management During 1981, December 1982.

This is the second annual report on significant actions of the Office of Personnel Management. Data for this report were derived from the comments solicited from organizations and individuals with a specific interest in the Federal personnel system, including onsite interviews with Directors of Personnel and other senior executives. Among other topics, this study discussed the implementation of merit pay, problems in recruiting and keeping executive talent, and the morale of the Federal work force.

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Reduction-in-Force in the Federal Government, 1981: What Happened and Opportunities for Improvement, June 1983.

This study reviewed employee perceptions of the 1981 reduction-in-force (RIF) practices to determine if the RIF's were conducted in accordance with the merit principles and with the avoidance of prohibited personnel practices. The data for this study were based on on-site interviews with those knowledgeable about the RIF process and Governmentwide surveys of 2,600 Federal employees and 800 senior Federal personnel officials. Some of the topics covered in this report include: The extent to which the 1981 RIF complied with the RIF regulations promulgated by OPM and the agencies, the extent to which the 1981 RIF affected the efficiency and effectiveness of the work force, and ways in which the RIF system could be improved in the future.

Study of MSPB Appeals Decisions for FY 1982, December 1983.

This is the third annual report on MSPB appeals decisions. This report analyzes the Board's decisions on the appeals during FY 1982 and places the results in historical context.

The RIF System in the Federal Government: Is It Working and What Can be Done to Improve It, December 1983.

As a result of much discussion about reductions in force during the summer of 1983 and OPM's proposed revisions to the RIF regulations, the Merit Systems Protection Board sponsored a roundtable to provide a forum for policymakers and other interested parties to discuss RIF issues and their effect on the merit system. This monograph is a summary of the roundtable proceedings including the panel members' presentations and the question and answer session between the audience and panel members.

Report on the Significant Actions of the Office of Personnel Management During 1982, December 1983.

This is the third annual report on significant actions of the Office of Personnel Management. Information for this report was derived from several sources: Written comments in response to information requests sent to the 20 largest Federal departments and independent agencies, responses of 4,900 Federal employees to the Governmentwide Merit Principles Survey, statements of OPM and Federal employee union officials at a MSPB sponsored roundtable, and recent studies prepared by General Accounting Office, Office of Personnel Management, and other public and private research organizations.

Significant Actions of the Office of Personnel Management: A Labor-Management Dialogue, August 1984.

This monograph is a summary of a roundtable discussion sponsored by MSRS on November 3, 1983. OPM officials and officials from the National Treasury Employees Union and the National Federation of Federal Employees served as panelists and responded to questions asking them to identify the three most significant accomplishments by OPM in 1982 and 1983, the three priority actions OPM should undertake, and the three priority actions Congress should take to improve the merit system. The discussion by panelists and members of the

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Federal personnel community who were invited to participate expanded upon: Determining the role of OPM in maintaining an effective merit system, adapting private sector principles to the public sector, creating and conducting performance appraisals, attracting and retaining a quality work force, and providing incentives to perform.

Blowing the Whistle in the Federal Government: A Comparative Analysis of 1980 and 1983 Survey Findings, October 1984.

This is the second full report on the subject of "whistleblowing" issued by the Board. It discusses the results of a 1983 survey and compares those results with similar data obtained in an earlier (1980) Board survey. The report, therefore, also provides longitudinal data that tracks over time Federal employee attitudes and self-reported experiences relative to the issue of employee disclosure of information about illegal or wasteful activities. Specific comparisons include the percentage of Federal employees who claim recent knowledge of fraud, waste, or abuse; what knowledgeable employees do with such information and why; and what happens to employees who do report an illegal or wasteful activity.

The 1984 Report on the Senior Executive Service, December 1984.

This is the second Board report on the state of the Senior Executive Service. The data in this study were based on surveys of over 1,200 current and over 800 former senior executives. This study reports on attracting and retaining highly competent executives, the executive performance appraisal system, the incidence of arbitrary actions and prohibited personnel practices in the executive ranks and the achievement of the SES mandated goals.

Report on the Significant Actions of the Office of Personnel Management During 1983, December 1984.

This is the fourth annual report on the significant actions of the Office of Personnel Management (OPM). Information in this report was derived from several sources: written comments in response to information requests sent to the 20 largest Federal departments and agencies; responses from employees to the Merit Systems Protection Board's Governmentwide Merit Principles Survey, and OPM's Federal Employee Attitude Survey III; recent studies prepared by the General Accounting Office and the Grace Commission, as well as other public and private research organizations. Issues covered in this report include: pay and performance, the Senior Executive Service, staffing and recruitment and OPM's personnel management evaluations.

Study of MSPB Appeals Decisions for FY 1983, September 1985.

This is the fourth annual report on MSPB appeals decisions. This report analyzes the Board's decisions on the appeals during FY 1983 and places the results in historical context.

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PROHIBITED PERSONNEL PRACTICES

The Civil Service Reform Act (Pub. L. No. 95-454, 92 Stat. 111 (1978)) forbids personnel actions based on the following eleven practices:

1) Discrimination based on race, color, religion, sex, age, national origin, handicapping condition, marital status or political affiliation;

2) Soliciting or considering employment recommendations not based on the individual's work performance, ability, aptitude, general qualifications, suitability, character, or loyalty;

3) Coercing the political activity of any person;

4) Deceiving or willfully obstructing anyone from competing for employment;

5) Influencing anyone to withdraw from competition for any position, whether to help or hurt anyone else's employment prospects;

6) Giving unauthorized preferential treatment to any employee or applicant;

7) Nepotism;

8) Taking or failing to take a personnel action as a reprisal against a whistleblower;

9) Taking or failing to take a personnel action as a reprisal for the exercise of any appeal right;

10) Discriminating on the basis of personal conduct which does not adversely affect the performance of any employee or applicant or the performance of others, except in case of criminal conviction for the conduct; and

11) Taking or failing to take any other personnel action if that would violate any law, rule, or regulation implementing or directly concerning the merit system principles.

For original text see 5 U.S.C. 2302(b).

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